

DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE

Resource Contact: Policy and Planning Section Effective Date: 10/11/05

References: RCW 90.03.290, RCW 90.03.380(1), RCW 90.44.100, POL 1120, POL 1210, PRO 1210

Purpose: The purpose of this document is to provide guidance to water resources staff for:

1. Determining irrigation efficiency; and
2. Determining consumptive use associated with irrigation.

Application:

1. Ecology frequently must estimate or determine irrigation efficiency, when issuing new water rights for irrigation purpose of use, when conducting tentative determinations of existing irrigation water rights, when evaluating trust water applications, when determining whether water is being wasted, in the context of adjudications, and in other situations.
2. Ecology must determine the consumptive use of an irrigation right:
 - a. When a change in purpose is proposed that could increase the consumptive use of a water right and such increase could result in impairment of existing water rights; and
 - b. When a change to enable irrigation of additional acres or an additional purpose of use is proposed, requiring application of the Annual Consumptive Quantity (ACQ) test¹.

Resources:

1. State of Washington Irrigation Guide (WIG), 1985 (amended 1990, amended 1992 for select western Washington crops)
2. Irrigation Requirements for Washington—Estimates and Methodology, 1982 (XB0925, reprinted 2001 EB1513)
3. National Irrigation Guide, 1997²
4. National Engineering Handbook, 1993³
5. WSU Public Agricultural Weather System (PAWS)⁴
6. Bureau of Reclamation AgriMet⁵

¹ See RCW 90.03.380. While an ACQ change requires averaging of the two highest years of consumptive use, consumptive increases that could lead to impairment may be evaluated using the highest year of consumptive use.

² <http://www.wcc.nrcs.usda.gov/nrcsirrig/irrig-handbooks-part652.html>

³ <http://www.info.usda.gov/CED/>

⁴ <http://index.prosser.wsu.edu/>

⁵ <http://www.usbr.gov/pn/agrimet/>

Definitions

The following definitions are intended within this policy:

- “**Application Efficiency (Ea)**”. The ratio of the average depth of water infiltrated and stored in the root zone to the average depth of water applied, expressed as a percentage.
- “**Available Water Capacity (AWC)**”. The portion of water in a soil that can be readily absorbed by plant roots of most crops. It is the amount of water stored in the soil between field capacity and permanent wilting point. Also called the Water Holding Capacity.
- “**Crop Irrigation Requirement (CIR)**”. Water supplied by irrigation to satisfy evapotranspiration that is not provided by water stored in the soil and precipitation. Where additional quantities of water are required for leaching, frost-protection, cooling and other miscellaneous crop requirements, these quantities are added to the CIR.
- “**Consumptive Use (CU)**”. Consumptive use includes crop evapotranspiration, and water evaporated during irrigation applications (e.g. spray, canopy and wind losses).
- “**Deep Percolation**”. Water that infiltrates below the root zone, including water used for leaching and water resulting from non-uniform application of water for irrigation.
- “**Distribution Uniformity (DU)**”. A measure of how evenly water infiltrates into the ground across a field during irrigation. DU is expressed as a percentage between 0 and 100 and is typically derived from “catch-can” testing in the field. It is defined as the ratio of the average depth of infiltration of the lowest quarter of measurements (e.g. lowest 25%) to the average depth of infiltration.
- “**Evapotranspiration (ET)**”. The sum total of plant transpiration, evaporation off of the soil surface, and water used for plant growth.
- “**Field Capacity**”. The water content at which drainage becomes negligible in a free-draining soil (e.g. the maximum amount of water held by the soil without drainage loss).
- “**Irrigation Scheduling**”. All farmers schedule their irrigation to some degree. Irrigation scheduling as defined in the literature consists of 1) understanding how much *available water capacity* the farm has in its *root zone* for the crop being grown; 2) estimating crop *ET* to predict the interval between watering; and 3) field-truthing ET predictions with some kind of soil-moisture measurement.
- “**Management Allowed Depletion (MAD)**”. This value, expressed in percent, is the percentage of the AWC in the root zone that plants can utilize before experiencing stress.
- “**Permanent Wilting Point**”. The soil-water content when a plant permanently wilts.
- “**Return Flow**”. The sum of deep percolation and runoff that returns to waters of the State or would return to waters of the State but is intercepted by a water user.
- “**Root Zone**”. The effective depth of crop roots in the soil from which water is extracted.
- “**Total Irrigation Requirement (TIR)**”. Water supplied by irrigation to satisfy evapotranspiration, miscellaneous water requirements, and irrigation efficiency.

Irrigation 101, The Water Budget

Crops need water to grow (photosynthesis), to transport nutrients from the soil and for cooling (transpiration). During the course of irrigation, some water that is intended for the root zone ends up in other places. Some water lands on the soil and evaporates before it can infiltrate. Collectively, these components of the water budget are called *evapotranspiration* or ET, which is commonly described in inches, inches/day, or inches/acre/day.

In addition to ET, applied water can evaporate in the air (*spray evaporative loss*), it can evaporate off the plant canopy (*canopy loss*), it can blow off the irrigated property (*wind drift*), it can *runoff* the land if the application rate is greater than the soil infiltration rate, it can *leak* out of the conveyance or distribution system, and it can *deep percolate* past the root zone due to over-application or non-uniform application. The irrigation water budget is shown in Figure 1 below⁶.

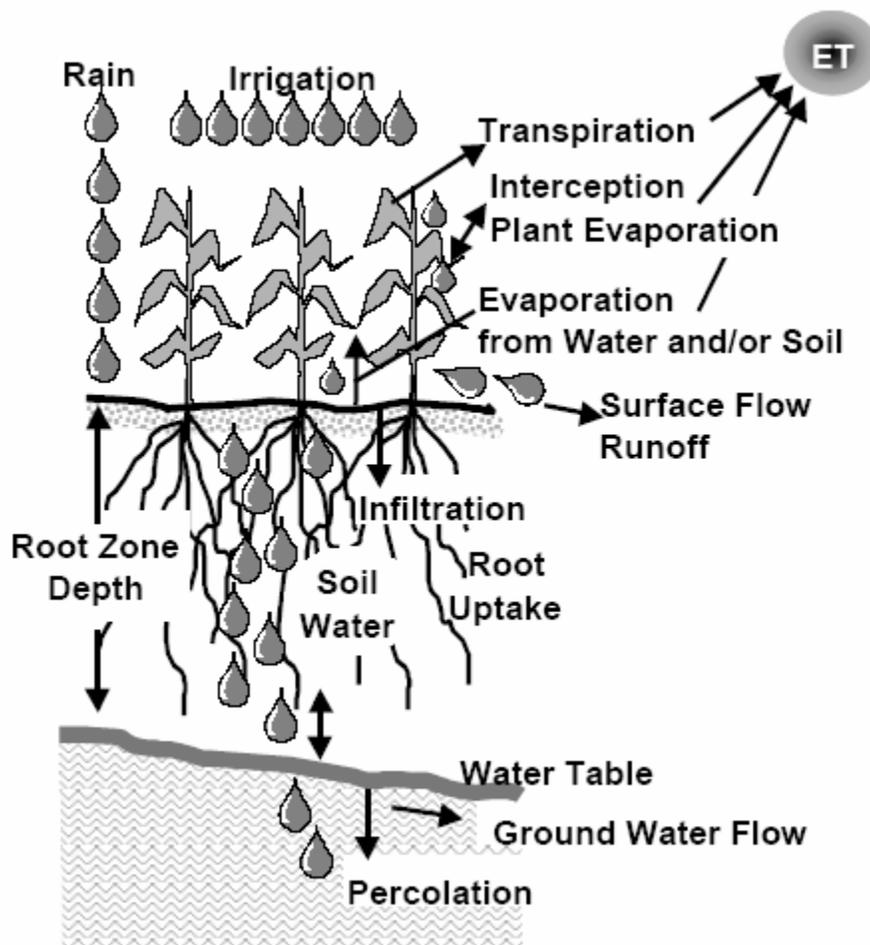


Figure 1: The Irrigation Water Budget

⁶ Figure from *Irrigation Efficiency, Encyclopedia of Water Science*, Dr. Terry Howell, USDA, 2003.

Magnitude of Components of the Irrigation Water Budget

The magnitude of the components of the irrigation water budget vary according to numerous variables, the most important of which is how the irrigation system is actually managed (e.g. irrigation set times, maintenance practices, matching supply to demand, and other local conditions). The following provides a summary of each of the components and magnitude ranges. Table 1 summarizes this information for use in estimating irrigation efficiency and consumptive use.

- *Evapotranspiration.* There are over 50 different methods for calculating ET, including simple temperature methods (e.g. Blanney-Criddle) to more accurate energy methods (e.g. Penman-Monteith). The Washington Irrigation Guide utilized the SCS Blanney-Criddle Modified method and work done by WSU using the FAO 24 Blanney-Criddle method in XB 0925 to derive crop consumptive use estimates (WIG, page WA683.11(a)(2)). PAWS and AgriMet both cite the use of a Kimberly-Penman ET model. Depending on the monitoring station and the years selected, values among these data sources within Washington can vary by as much as 20%, but for most stations, the variance is on the order of 1-2 inches.
- *Irrigation Efficiency.* Irrigation efficiency represents the amount of water that needs to be applied in addition to the crop requirement for a particular type of irrigation system to meet the component system losses described below.
 - *Spray Evaporative Loss.* When water travels through the air during sprinkling, some water evaporates. The magnitude of evaporation depends on drop size (smaller drops evaporate quicker), drop travel time (e.g. sprinkler height off the ground, sprinkler angle, and wind), and environmental conditions (temperature, humidity, etc.). For sprinkler systems within low heights and low wind conditions (5 feet or less off the ground and 5 mph or lower average conditions), spray evaporative loss tends to be on the order of 2% or less. For higher elevations and wind conditions, evaporative losses can be > 10%.
 - *Canopy Loss.* When water travels from the sprinkler to the ground, some water lands on the plant canopy⁷. The amount of water held on the canopy depends on crop leaf area, crop type, and growth stage of the crop. Water that is retained on the canopy will evaporate fairly quickly once irrigation stops (e.g. 1 hr or less during the day). Water evaporating off the plant canopy cools the plant, which reduces the amount of transpiration for the day. However, because evaporation from a free water surface occurs at a faster rate than transpiration through the plant leaves, the ET on the day of irrigation is greater than the ET on the day before or the day after irrigation. The net increase in evaporative loss associated with canopy losses (after subtracting out the transpiration that would have

⁷ Although XB0925 indicates that the crop irrigation requirements in Appendix B of the WIG include evaporation off the plant foliage, in fact the figures provided do not include canopy losses. The WIG derives its ET estimates based on an assumption of a surface application (e.g. rill), applying a 2-inch application depth for a silt loam soil (Source: Tom Spofford, USDA).

occurred that day) is typically on the order of 3 – 5%. Net canopy losses can be greater (10% or more) when application rates are low (e.g. center-pivots at high rotation speeds).

- *Wind Drift.* Wind can cause sprinkled water to drift out of the application area. If it drifts off the irrigated property, it is typically considered to be consumed (e.g. edge effects). If it drifts to the crop in another part of the field (more common), then subsequent evaporation of these droplets off the plant canopy or the soil cools the crop and reduces transpiration. The net consumptive magnitude of wind drift under most conditions is on the order of a few percent. However, under high average wind conditions, 10% or more, wind losses can be higher and can lead to decreased application uniformity.
- *Runoff.* When water is applied at a rate greater than the soil can infiltrate, it can lead to runoff. Runoff within a field may still be used by the crop, although areas of low elevation may be areas of deep percolation if runoff typically collects there. If runoff returns to waters of the State, it is considered to be return flow. Runoff is more prevalent in surface irrigation systems (10 – 40%) than in sprinkler systems, although some irrigation systems (e.g. center-pivot LEPA) can have runoff due to high application rates (2 – 20%).
- *Deep Percolation.* Deep percolation is common in both surface and sprinkler irrigation systems, the magnitude of which is heavily influenced by irrigation scheduling and soil type. Leaks, over-application and non-uniform application can all lead to deep percolation. If deep percolation returns to waters of the State or is intercepted but would otherwise return to waters of the State, it is considered return flow.
 - *Leaks.* Leaks are a function of system installation, age and system maintenance. Leaks can occur underground at joints and from cracks in the pipe due to age or improper bedding, and can occur above ground at sprinklers, valves and plugs. The National Engineering Handbook identifies the magnitude of leaks as 1 – 10%, with the lower end of the range indicative of a well-maintained system.
 - *Over-Application (Spring/Fall, Irrigation Scheduling).* Over-application occurs when irrigation water is supplied in excess of the water storage capacity of the soil. Over-application most commonly occurs when irrigation demand is low (spring and fall), due to labor constraints (fixed irrigation times associated with hand-move systems), and due to non-uniformity of soils within a field (e.g. areas of sandy soil in a predominantly silt-loam field). Over-application can be estimated by comparing the sprinkler capacity and run time (e.g. gpm x irrigation hours) to the available water capacity of the soil (Appendix A in the WIG).

- *Non-Uniform Application (DU)*. Sprinklers overlap in order to provide uniform application of water on the field. However, all sprinklers designs result in some areas of the field getting too much water and some areas not getting enough. Environmental conditions (e.g. wind) and system conditions (e.g. pressure and wear-and-tear on sprinklers) also affect uniformity. The DU is a measure of uniformity and indicates how much water the lowest ¼ of the field gets compared to the average. DU's are typically derived from catch-can tests.

Calculating vs. Assuming Irrigation Efficiency

Irrigation efficiency (Ea) can be calculated by dividing the crop irrigation requirement (CIR) by the total water use (subject to the extent and validity of the water right).

$$Ea = CIR / \text{Total Water Use}$$

Because irrigation efficiency is heavily dependent on the type of system, the irrigation practice of the farmer and other case-specific factors, irrigation efficiency should be calculated where possible, rather than assumed. The CIR can be found in Appendix B of the WIG, from PAWS or AgrMet, or can be derived empirically. The total water use can be calculated from water meter data, power meter data or run-time information (e.g. average pump rate x average hours/day run x irrigation season).

Where total water use data is unavailable, irrigation efficiency may be assumed. However, system management is as important as the type of irrigation system in determining efficiency and each farm needs to be looked at on a case-by-case basis. Where possible, a site visit and interview with the farmer should be conducted to investigate irrigation practices. Table 1 provides reasonable irrigation efficiency ranges for different types of irrigation systems and based in part on work by Dr. Terry Howell⁸ and Dr. Blaine Hanson⁹. Farmers that operate systems near the higher end of the range often exhibit the following:

- Newer system infrastructure
- Active maintenance program
- Knowledge of seasonal crop ET rates
- Scheduling irrigation in response to crop demand
- “Ground-truthing” of soil moisture

Farmers that operate systems near the lower end of the range may exhibit one or more of the following:

- Older system infrastructure
- Inadequate maintenance program

⁸ *Irrigation System Efficiencies*, Terry A. Howell, PhD, PE, USDA-Agricultural Research Station, Bushland, Texas, 2002 Proceedings of the Central Plains Irrigation Short Course and Exposition.

⁹ *Practical Potential Irrigation Efficiencies*, Blaine R. Hanson, PhD, 1995 Proceedings of the First International Water Resources Conference.

- Improper irrigation scheduling
- Labor constraints
- Site constraints (e.g. soils, topography, water delivery system)

Determining the Consumptive / Non-Consumptive Balance of the Total Water Use

During its preparation of this guidance document, Ecology consulted with industry experts, and collected literature on irrigation efficiency and consumptive use. These efforts culminated in a conference held in Pasco, Washington on November 29-30, 2004 attended by irrigation experts from academia, government, and the private sector. The experts were asked to assist Ecology to 1) understand and quantify the terms and factors that affect irrigation system efficiency, and 2) within each irrigation efficiency term, understand and quantify the consumptive/non-consumptive balance. The workshop included a prolonged discussion of the component elements of irrigation efficiency, including spray evaporative loss, canopy loss, wind drift, deep percolation, and runoff. These components vary based on numerous other variables¹⁰, and were all dependent on irrigation scheduling and management. The experts recommended against individual quantification of these elements and focused instead on grouping and quantifying the consumptive (e.g. spray loss, canopy loss, and wind drift) and non-consumptive terms (e.g. deep percolation and runoff). The experts also agreed that this approach was reasonable in balancing the need for accuracy for the farmer, accuracy to protect existing water rights, and the need to issue timely permit decisions by Ecology.

Table 1 includes the term %Evap, which represents a grouping of the consumptive components of irrigation efficiency. The experts generally agreed that in any above-ground water application system, a 5% consumptive loss component was reasonable. As the point of application (e.g. sprinkler) was elevated above the ground, the consumptive components of irrigation efficiency (e.g. wind, spray loss, etc.) had more opportunity to evaporate water, resulting in higher consumptive losses (e.g 10% to 15%).

The %Evap term represents a percentage of the total applied water that is consumed during the act of transporting the water to the root zone. By adding the %Evap to the calculated or assumed irrigation efficiency (Ea), the balance between consumptive use (%CU) and return flow (%RF) can be obtained. While the %CU and %RF terms provided in the table represent reasonable assumptions based on Ecology's understanding of the underlying science, each applicant may submit site-specific information and calculations regarding their water use for consideration by the permit writer. The permit writer shall consider such information on a case-by-case basis. Example calculations are provided in the sections following the table.

¹⁰ Variables discussed included site conditions, topography, type of system, irrigation scheduling, differences in ET estimates, effective vs. actual root zone, relative crop cover as a function of emergence and harvest, timing effects of deep percolation, in-field travel of water above ground and in the subsurface and others.

Table 1: Summary of Application Efficiency Ranges, Consumptive Use, and Return Flows¹

Method		Application Efficiency, E_a (%) ²		%Total Evaporated	% Total Use Consumed	Return Flow
		Range	Average, $E_{a_{avg}}$	%Evap	%CU, Average ³	%RF, Average ⁴
Surface:	Graded Furrow	50 – 80	65	5	70	30
	w/ tailwater reuse	60 – 90	75	5	80	20
	Level Furrow	65 – 95	80	5	85	15
	Graded Border	50 – 80	65	5	70	30
	Level Basins	80 – 95	85	5	90	10
	Flood	35 – 60	50	5	55	45
Sprinkler:	Periodic Move (Handline)	60 – 85	75	10	85	15
	Side Roll (Wheelline)	60 – 85	75	10	85	15
	Moving Big Gun	55 – 75	65	10	75	25
	Solid-Set—Overtree	55 – 80	70	15	85	15
	Solid Set--Undertree	60 – 85	75	10	85	15
	Pop-Up Impact	60 – 85	75	10	85	15
Center-Pivot	Impact heads w/end gun	75 – 90	80	15	95	5
	Spray heads w/o end gun	75 – 95	90	10	100	0
	LEPA ⁵ w/o end gun	80 – 98	92	5	97	3
Lateral-Move	Spray heads w/hose feed	75 – 95	90	10	100	0
	Spray heads w/canal feed	70 – 95	85	10	95	5
Microirrigation:	Trickle/Drip	70 – 95	88	5	93	7
	Subsurface Drip	75 – 95	90	0	90	10
	Microspray	70 – 95	85	10	95	5

1. Calculate the actual water use from water meter data, power meter, or run-time data. In the absence of such data, the TIR (total irrigation requirement) = CIR / E_a , where CIR is the crop irrigation requirement from the WIG (Appendix B) and E_a is the case-specific application efficiency above.
2. %Evap is the portion of the total irrigation requirement that is evaporated due to factors other than crop ET.
3. Select appropriate %CU based on type of irrigation system. If calculated E_a is greater or less than $E_{a_{avg}}$, then %CU = $E_a + \%Evap$. CU = TIR x %CU.
4. Select appropriate %RF based on type of irrigation system. If calculated E_a is greater or less than $E_{a_{avg}}$, then %RF = 100 - %CU. RF = TIR x %RF
5. Low Energy Precision Application.

How Do I Use Table 1 When Making an Analysis of Water Use for a Tentative Determination of the Extent and Validity of an Existing Water Right?¹¹

When evaluating total water use for an existing water right, the permit writer should attempt first to calculate actual efficiency rather than assume an efficiency from Table 1. Actual efficiency (Ea) can be determined by dividing ET for the crop(s) grown by total water use. Total water use can be calculated:

- From water meter data.
- By converting dedicated power meter data (kW-hr) to flow (see WAC 173-173-160).
- From system capacity (e.g. average pump rate x average hours/day run x irrigation season).

If actual efficiency cannot be calculated due to unavailability of data, then the total water use may be estimated by selecting an ET for the crop(s) grown, selecting efficiency, and estimating or measuring the irrigated acres.

- Selection of an ET will typically be based on the Washington Irrigation Guide, although depending on the location of the project to agricultural/weather stations, use of PAWS or AgriMet may be appropriate. Because the difference in ET predicted from these sources is typically small, permit writers may use any of these sources¹².
- Selection of an average efficiency from Table 1 is reasonable. The permit writer may also consider local custom and the design efficiency considered in the original water right authorization in determining an assumed efficiency.
- Estimation of irrigated acres is typically determined by GIS calculation from one or more state-wide aerial photo coverages, from parcel information, or by direct measurement using a professional survey or GPS.

The permit writer should use multiple means of estimating water use if the data is available. Where actual data is present, it should be used over methods of estimation unless a compelling reason exists to disregard it (e.g. water meter shown to be not calibrated, non-dedicated power meter). The permit writer must use best professional judgment in applying the guidance herein to the case-specific field conditions of each permitting decision.

¹¹ See POL 1120 for a more comprehensive discussion of tentative determinations.

¹² Ecology is currently working with USDA on adoption of a standard for the State in the calculation/estimation of ET. This guidance document may be updated in the future when Ecology identifies a preferred methodology.

How Do I Use Table 1 When Making Permitting Decisions Involving ACQ or Consumptive Use?

Once an actual or estimated efficiency is determined, the consumptive portion of the efficiency term can be obtained from Table 1.¹³

- If the estimated or calculated efficiency is *equal* to the average efficiency $E_{a_{avg}}$, the consumptive and return flow portions of the E_a can be read directly from the table. Then, the consumptive use and return flow can be calculated by multiplying those factors times the total irrigation requirement (TIR). Multiplying the CU by the total acres provides the total consumptive use under the water right.
 - Example 1. A farmer has 10 acres of pasture that he irrigates with handlines. No water or power meter data are available. The WIG crop irrigation requirement (CIR) from Appendix B for pasture is 3 ac-ft/ac. The farmer's water right allows an annual diversion of 40 ac-ft. Based on the table, the average handline is 75% efficient which is the same as that assumed in the original water right authorization. The total irrigation requirement (TIR) is $(3) / (0.75) = 4$ ac-ft / ac. The total water use estimate then is $(4 \text{ ac-ft} / \text{ac}) \times (10 \text{ acres}) = 40$ ac-ft. From the table for average conditions, %CU is 85% and % RF is 15%. Therefore, the consumptive portion is $(40 \text{ ac-ft}) \times (0.85) = 34$ ac-ft and the RF = 6 ac-ft (40 ac-ft – 34 ac-ft).
- If the estimated or calculated efficiency is *less* than $E_{a_{avg}}$, the consumptive and return flow portions of the E_a must be calculated using the %Evap term. %CU is calculated by adding %Evap to the actual efficiency.
 - Example 2. Another farmer has 10 acres of pasture that he irrigates with handlines. Water meter data (51.7 ac-ft total use on 10 acres) and the WIG (assume 3 ac-ft/ac as in the example above) are used to calculate an actual efficiency of 58% for handline sprinklers. The water right in question did not specify a maximum annual volume. The permit writer considers the range of reasonable irrigation efficiencies in Table 1, and the factors under RCW 90.03.005 and the Supreme Court Case *Grimes*, and concludes that 58% efficiency for handlines is reasonable and non-wasteful in this case¹⁴. %CU is calculated by adding the %Evap term (10%) to the calculated efficiency of 58%, or 68%. The %RF term is calculated by $100 - \%CU$, or 32%. The TIR is the CIR divided by the actual efficiency of 58%, or 5.17 ac-ft/ac. Therefore, the total estimated water use for the 10 acres is 51.7 ac-ft (5.17 ac-ft/ac x 10 acres). The

¹³ The permit writer should verify efficiency and consumptive use estimates by comparing the estimates to information obtained from the water right file and from the site investigation. Information on the farmers irrigation scheduling can be used to ground-truth irrigation efficiency and consumptive use estimates (e.g. system capacity and irrigation set times).

¹⁴ If the calculated efficiency were far below the reasonable efficiencies shown in the table, then a waste determination may be appropriate. No water right exists where water is wasted. Only a reasonable amount of water for the type of irrigation system used can be considered in a permit decision.

consumptive portion is $(5.17 \text{ ac-ft/ac}) \times (0.68) \times (10 \text{ acres}) = 35.16 \text{ ac-ft}$ and the
RF = $(5.17 \text{ ac-ft/ac}) \times (0.32) \times (10 \text{ acres}) = 16.54 \text{ ac-ft}$.

- If the estimated or calculated efficiency is *greater* than the average E_a , the consumptive and return flow portions of the E_a must also be calculated using the %Evap term. Typically, systems that are more efficient than the average will first reduce return flow and then reduce consumptive use of the crop (e.g. deficit irrigation). The permit writer should obtain information on irrigation scheduling for the project to determine the consumptive / non-consumptive balance.
 - Example 3. A third farmer has 10 acres of pasture irrigated with a wheelline. Power meter data and PAWS are used to calculate an actual efficiency of 85% for wheelline sprinklers (e.g. 34 ac-ft of crop irrigation requirement from PAWS divided by 40 ac-ft of measured water use from the power meter). The site investigation and interview demonstrates that the farmer scheduled his irrigation in response to crop needs. The farmer routinely visited the AgriMet website and obtained ET rates, dug holes for hand-moisture sensing, and changed the wheelline on 12-hour sets which was sufficient to refill the root zone. Based on this information, the permit writer could conclude that the farmer's irrigation practice had reduced return flows to a minimum. The percent consumptive use (%CU) would be calculated by adding the %Evap to the actual % E_a ($10\% + 85\% = 95\%$) and return flow would be %RF = 5% ($100\% - 95\%$). Therefore, CU = $40 \text{ ac-ft} \times 95\%$ or 38 ac-ft and RF = $40 \text{ ac-ft} \times 5\% = 2 \text{ ac-ft}$.

How Do I Use Table 1 When Making Permitting Decisions on Applications for a New Water Right?

Applications for a new irrigation right may involve developed or undeveloped land. If the project involves undeveloped land or changes to existing land for new infrastructure, the permit writer may select an average efficiency from the table. The permit writer may also consider the Grimes factors in selecting an appropriate irrigation efficiency.

Where land is currently under irrigation and a new water right is sought (e.g. for additional water to meet a higher crop duty or a new source), Ecology will typically conduct an investigation of the existing water uses. This can inform the permit writer as to the efficiency required for the proposed project.


Ken Slattery
Water Resources Program Manager

GUIDANCE FOR PROCESSING AND MANAGING TRUST WATER RIGHTS

Resource Contact: **Trust Water Right Coordinator**

Effective Date: **June 2011**

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
	POL-1020	PRO-1000
	PRO-1050	POL-1120
	GUID-1210	POL-1200
	Washington Water Acquisition Program Strategy	
	Trust Water Right Program Guidelines	
	Rettkowski v. Dept. of Ecology	

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

Application: This guidance should be followed when Water Resources Program staff:

- Provides advice to the public
- Processes trust water right applications
- Processes applications for change or transfer of a water right that includes a trust water right proposal.

This guidance supersedes any previous guidance for processing or managing trust water rights. The guidance may be supplemented periodically as the Water Resources Program gains experience in the acquisition, processing, and management of trust water rights, or when the one of the governing statutes is amended.

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 combined with other water right changes or transfers.

Table of Contents

Section 1 - Frequently Asked Questions	1
Section 2 - Managing a Trust Water Right	6
Section 3 - Trust Water Agreements and Trust Water Right Applications	8
Section 4 - Acquisition Resulting from a Publicly Funded Water Conservation Project	10
Section 5 - Acquisition by Short-Term Lease (five years or less)	13
Section 6 - Acquisition by Long-Term Lease (greater than five years)	16
Section 7 - Purchase by the State or with Other Public Funds	19
Section 8 - Donation of a Water Right	21
Section 9 - Water Right Acquisitions through Water Savings Incidental to Processing an Application for Permit or Application for Change	26
Section 10 - Modification or Extension of an Existing Trust Water Right:	27
Section 11 - Trust Water Right Data	Error! Bookmark not defined.
Appendix A: Checklist for Trust Water Right Application Review	A-1
Appendix B: Matrix of Trust Water Right Processes and Considerations	B-1
Appendix C: Definitions	C-1
Appendix D: Progress Sheet for Trust Water Right Applications	D-1
Appendix E: Public Notices	E-1
Appendix F: Model letter for Acceptance of a Trust Water Right Donation	F-1
Appendix G: Trust Water Right Report Form	G-1
Appendix H: Template for Certificate of Trust Water Right Acquisition	H-1
Appendix I: Pre-Trial Order #6	I-1
Appendix J: Pre-Trial Order #12	J-1
Appendix K: Pre-Trial Order #17	K-1
Appendix L: Motion To Be Joined	L-1
Appendix M: Order To Join	M-1
Appendix N: Quit Claim	N-1

Section 1 - Frequently Asked Questions

Q1. What is a trust water right? There are two types of trust water rights, distinguished by the controlling statutes. A trust water right, as defined in Chapter 90.42 RCW, is any water right acquired by the state for management in the State's Trust Water Right Program. This can include portions of water rights acquired by the state's funding of irrigation projects through programs such as the Irrigation Efficiencies Grants Program.

The definition in Chapter 90.38 RCW for the Yakima River basin is slightly different. There, a trust water right is the portion of a water right no longer required because of water conservation improvements to an existing system [[RCW 90.42.020\(3\)](#)]. It may also be any other water right acquired by Ecology for the Yakima River Basin Trust Water Right Program [[RCW 90.38.010\(3\)](#)].

Q2. What statutes govern trust water rights? Primary authority is in Chapters 90.38 and 90.42 RCW. Related authorities are in [RCW 90.03.380](#) (Changes/Transfers), [RCW 90.03.390](#) (Temporary Changes), and [Chapter 90.66 RCW](#) (Family Farm Water Act).

Q3. Are trust water rights only for instream purposes? No. Trust water rights can be for many purposes [[RCW 90.38.040\(3\)](#)] and [[RCW 90.42.040\(1\)](#)].

Q4. If a water right is to be used for instream flow purposes, is Ecology required to change the purpose of use of the water right? Yes. However, the authority for performing the change of purpose varies. A change of purpose of use is reviewed under [RCW 90.03.380](#) and [RCW 90.03.390](#); or under specific requirements of [RCW 90.38.040\(6\)](#); or under Chapter 90.42 RCW in either of the two following circumstances:

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

Q5. 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. Family Farm Water Act (Chapter 90.66 RCW) 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 a city, town, or area designated for urban growth under Chapter 36.70 RCW if not planning under Chapter 36.70A RCW.
 - d) Water is made surplus through physical or operational water use efficiency improvements associated with 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 Water Resource Inventory Area (WRIA) or urban growth area.

Q6. 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 severe limitations or lack of seniority that, as a result, would not sufficiently benefit fisheries. Ecology will normally consult with Washington Department of Fish and Wildlife fisheries biologists to make this determination.
3. Supplemental or stand-by rights, unless they are acquired in conjunction with the primary water right.

Q7. Is a [Trust Water Right Application form](#) required to accept a water right into the Trust Water Right Program? Yes. However, the [Irrigation Efficiency Grants Program](#) (IEGP) uses a consolidated application form that replaces the trust water right application form.

Q8. Are there additional forms or steps needed to place water in the Yakima River Basin Trust Water Right Program before the adjudication is complete? Yes. Until the Yakima River Adjudication ends, short-term leases in the Yakima River basin require that either the water right holder or Ecology petition the Superior Court to change the purpose of use of a Court Claim. If approved, the Court will issue an Order Pendente Lite. (Pre-Trial Orders #6 and #12 in Appendices I and J). If Ecology approves a permanent change of a Court Claim, a Pre-Trial Order #17 Notice (Appendix K) must be filed by Ecology giving notice to the Court and other parties. Also, Ecology must file a motion and then receive an Order Joining a Party (Appendices L and M are examples) from the Superior Court to acknowledge that Ecology is the owner of the trust water right.

Q9. How does relinquishment apply to trust water rights? Trust water rights are exempt from relinquishment [[RCW 90.38.040\(6\)](#), [RCW 90.42.040\(6\)](#), and [RCW 90.14.140\(2\)\(h\)](#)].

Q10. What happens to the water right when the term of a temporary donation or lease ends? When a temporary donation or lease ends or expires, the water right reverts to the donor or lessor in the same amount accepted into the Trust Water Right Program. For rights that will go through a subsequent change or transfer, Annual Consumptive Quantity (ACQ) is not affected. However, because an extent and validity review under [RCW 90.03.380](#) was not performed by Ecology when the water right was accepted into the Trust Water Right Program, the right that reverts to the donor may not reflect its actual validity or quantity [[RCW 90.42.080\(9\)](#) and [RCW 90.38.020\(7\)](#)].

Q11. Does placing a water right into the Trust Water Right Program by lease or donation “reset” or “suspend” the five-year relinquishment clock? Under 90.42.040 (4)(c), trust water rights accepted into the trust program are considered to be exercised, so the water right’s relinquishment clock is reset. **This does not mean that relinquished rights have been revived.**

Q12. How is a trust water right exercised? Exercising a water right means putting the water to an actual beneficial use. For an out-of-stream use, exercising the right is obvious by the

physical diversion of water from a stream and applying it to a beneficial use, such as irrigation of a crop. For an instream or groundwater preservation use, the water is instead used for incremental enhancement of instream, groundwater resources and riparian habitat. Exercising an instream flow trust water right occurs when the first three actions (see the following list) have occurred. It is irrefutable when the fourth action occurs:

1. The state acquires the water right through donation, lease, or purchase.
2. The state makes public notice of the trust water right.
3. The historical use of the water right stops or is reduced.
4. The water master or stream patrolman curtails or regulates a junior diversion in favor of the senior instream flow trust water right.

Even if an acquired trust water right is not put to actual beneficial use, trust water rights are considered exercised when acquired into the trust water rights program.

Q13. How can the Trust Water Right Program be used to prevent relinquishment of a water right? Trust water right statutes allow a water right holder to donate all, or a portion, of a water right to the Trust Water Right Program for instream flow or groundwater preservation purposes. Ecology must accept a donation to the Trust Water Right Program for instream flow or groundwater preservation purposes unless the donor places unreasonable conditions on the donation. The donated trust water right, plus any portion of the right that would continue to be used by the donor, cannot exceed the amount of water used in the previous five years. [\[RCW 90.42.080\(4\)\]](#)

A donation for instream flow or groundwater preservation purposes is not subject to an extent and validity review. Therefore placement in the Trust Water Right Program is not evidence of the validity or quantity of the water right [\[RCW 90.42.080\(1\)\(b\), \(4\), \(5\), and \(9\), RCW 90.42.040\(8\), and RCW 90.38.020\(1\)\(b\), \(4\), and \(7\)\]](#).

Q14. How will Ecology decide whether to accept a donated water right into the Trust Water Right Program? Ecology will review the Trust Water Right Application form, available aerial photography, publicly available county assessor's information, and the supplemental materials the donor provides showing proof of the amount of water used during the previous five years.

In cases where water use has not occurred in the most recent five year period, and the applicant claims an exemption or sufficient cause for non-use under [RCW 90.14.140\(1\)](#), Ecology will review materials provided by the applicant showing;

1. sufficient cause for non-use, OR
2. that an exemption from relinquishment applies.

If Ecology concurs with applicability of the claimed sufficient cause or exception, it will review water use information provided for the five year period preceding the exempted or excused period of non-use. The letter accepting the trust water donation will also explicitly state that acceptance of the water right into trust is not evidence of the validity or extent of the water right. (See Appendix F)

In cases where municipal and hydropower rights have not been used within the most recent five year period under RCW 90.14.140(2) (a) or (d), the amount of water eligible to be acquired shall be based on historical beneficial use.

Q15. How does Ecology quantify the amount of water that can be accepted into the trust program? Ecology determines the amount of water that can be accepted into trust by:

- 1) An extent and validity review (required if [RCW 90.03.380](#) applies), OR
- 2) The highest use within the previous five years before the acquisition, [[RCW 90.42.080\(4\)](#)], OR
- 3) For rights subject to non-use exceptions under 90.14.140(1), the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused , [[RCW 90.42.080\(10\)](#)], OR
- 4) For municipal and hydropower rights under RCW 90.14.140(2) (a) or (d), the amount of water eligible to be acquired shall be based on historical beneficial use. [[RCW 90.42.080\(11\)](#)]

In some instances, the legislature has identified more than one method for calculating the amount of water eligible for acceptance into the trust water rights program. In such instances, Ecology calculates the amount of water eligible for acceptance using each method and then uses the smaller of the values.

Q16. What is an “extent and validity review?” It is a review required by [RCW 90.03.380](#) to support a conclusion that the water use was lawfully originated and determine the amount of water applied to beneficial use. It involves assessing historical records, maps, aerial photography, and other available documents. The purpose and nature of the review was clarified by the Washington State Supreme Court in *Okanogan Wilderness League v Twisp* and *R.D Merrill v Pollution Control Hearings Board*. The review evaluates the water right (not only the portion proposed for change) to determine the maximum amounts of water used as described in the claim, permit, or certificate. The review also determines if there are any periods of non-use greater than five successive years. If so, Ecology may then consider whether an exemption or sufficient cause for non-use applied (avoiding relinquishment). The determinations required by [RCW 90.03.380](#) are not final; they are tentative and only a Superior Court can make a final determination of a water right’s extent and validity.

Q17. How is the place of use of a trust water right described?

Surface Water. The place of use of a trust water right for instream flows is defined within a primary reach and, if applicable, 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 between the original diversion point and the point where the last return flows reenter the stream or river. The secondary reach is the portion of a water body that received return flow waters while the water right was exercised for its original out-of-stream purpose. The secondary reach, therefore, only benefits from the former consumptive portion of the trust water right. It is downstream from the point where return flows from the historic use under the water right reentered the stream or river. [[RCW 90.42.020\(2\)](#) and [RCW 90.38.010\(2\)](#)]

Ground Water. The place of use for groundwater preservation trust water rights is defined as the body of public groundwater from which the original right entitles water use. [[RCW 90.42.040 \(2\)](#)]

Q18. How are the instantaneous and annual quantities of an instream flow trust water right protected? Ecology may enforce against junior water uses in the primary reach to protect the full instantaneous and annual quantities under the water right or portion of the water right placed in the Trust Water Right Program. In the secondary reach, only the consumptive quantities associated with the previous use of the water right may be protected against other water right holders. In the Yakima River basin, the Trust Water Right is to be exercised on the same schedule as the historic use, unless storage is used to reschedule delivery of the water. In other basins, we recommend resolving the schedule of historic use to avoid claims that exercising the trust water right would impair other water rights. You can determine the schedule by calculating the consumptive and non-consumptive fractions of the water right on a month-by-month basis [[RCW 90.38.040\(4\)](#)]. See [Trust Water Program Guidelines](#), and [GUID-1210, DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE](#).

See the [Trust Water Rights Program Guidelines](#) for an example calculation of the primary and secondary reach quantities associated with using an irrigation right in the Trust Water Right Program for instream flow purposes.

Q19. How are the instantaneous and annual quantities of a groundwater right protected? Ecology may enforce against junior groundwater users within the same body of public groundwater to protect the full instantaneous and annual quantities under the water right or portion of the water right placed in the Trust Water Right Program. [[WAC 173-150](#)]

Section 2 - Managing a Trust Water Right

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

The conditions and provisions of the Trust Water Right Report of Examination and any agreement with the owner or seller determine how we may exercise a trust water right. If public funding is used to acquire the water right, the trust water right will be used to satisfy a public purpose. Most often that 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 (TWRP). In those cases, the state holds the trust portion and the original water right holder retains any remaining portion of the water right. To ensure that the water right is not enlarged to the detriment or injury of other water rights competing for the same stream, added care should be taken when exercising the trust water right. The trust water agreement should clearly reflect the instantaneous and annual quantities of each portion of the water right, including any limitations on use of either portion during periods when use of both portions of the water right may conflict.

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

A. Post-acquisition Verification Inspections

1. Ecology should confirm the acquisition or conservation project is complete prior to exercising the trust water right. For projects not under the Irrigation Efficiencies Grant Program (IEGP), Ecology staff should verify completion by inspecting the site. We should also confirm compliance with conditions of the funding agreement.
2. A Conservation District technician or other staff will typically inspect and verify projects funded by the IEGP were constructed as designed prior to the Conservation Commission releasing final funding. Their verification confirms that the funding agreement specifications have been satisfied.
3. Ecology should conduct periodic compliance checks through the life of the trust water right acquisition. The Irrigation Efficiencies Grant Program and the Columbia Basin Water Transaction Program include post-implementation project assessments. Compliance checks are frequently performed by the Department of Fish and Wildlife in conjunction with post implementation habitat assessments. Regulation of Other Water Rights to Protect a Trust Water Right.
4. Public notice: Ecology must give public notice of the trust water right before we may regulate junior diversionary water rights to protect a trust water right. Public notice at the time of acquisition that included the authorized beneficial use(s) of the trust water right is sufficient.
5. Regulating adjudicated or state-issued rights: An Ecology water master or appointed stream patrolman can regulate junior water rights if the junior water rights and the water

right held in trust were confirmed in a Superior Court Adjudication of water rights or are state-issued permits and certificates. ([Rettkowski v. Department of Ecology](#)).

6. Regulating un-adjudicated claims and federal reserved rights: Ecology must seek an alternative means of relief where the trust water right and junior water rights have not been adjudicated and are not state-issued permits or certificates. We must file a petition or motion with the local Superior Court seeking relief from impairment of the trust water right by the junior water right claim.
7. Regulating illegal or wasteful uses: Ecology may regulate where unauthorized water use or wasteful practices interfere with or impair the trust water right ([RCW 90.03.005](#) and [RCW 90.03.400](#)). Inform the regional section manager and program enforcement staff if you become aware of such a case. See [Enforcement Policy](#).
8. Protecting trust water rights in primary and secondary reaches: Ecology may regulate a junior water user within the primary reach who impairs the instantaneous rate of a trust water right. In the secondary reach or upstream of it, Ecology may regulate a junior user who interferes with maintenance of the consumptive quantity outlined in the schedule in the trust water right.

B. Claims of Impairment when Exercising a Trust Water Right.

1. Filing claims: Other water right holders may file claims of impairment against a trust water right when exercised [[RCW 90.42.040\(4\)](#), [RCW 90.42.080\(4\)](#), and [RCW 90.42.080\(8\)](#)].
2. Investigating claims: Ecology must investigate all claims that a trust water right is impairing other water rights.
3. Eliminating impairment: Ecology must modify or terminate the trust water right authorization if it is determined that use of a trust water right has impaired another water right that existed at the time of first exercising the trust right. [[RCW 90.42.040\(4\)](#)].
4. Modifying a trust water right: Ecology will modify the trust water right, when necessary to resolve impairment of an existing water right, consistent with the procedure in Section 10.

Section 3 - Trust Water Agreements and Trust Water Right Applications

A trust water right is created when a water right is both conveyed to the state by purchase, lease, gift, donation, or means other than condemnation, and accepted into the Trust Water Right Program (TWRP). In some cases, a single process can meet both requirements. In other cases, two sequential steps occur: The water right is conveyed to the TWRP through an agreement and an associated trust water right application, followed by acceptance of the water right by the state.

A. The general steps associated with processing trust water right agreements and applications are as follows:

1. An agreement to convey a water right to the TWRP may be documented in a letter of instruction, contract, or other instrument.
2. A completed Trust Water Right Application signed and submitted by the water right holder.
3. 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 TWRP, subject to the terms in the acceptance letter. The trust water application may serve as the letter of instruction if the only condition specified by the donor is the period of the donation. See Appendix F.
4. A Trust Water Right Report of Examination documents the change of the water right's purpose of use and the conditions placed upon the trust water right.
5. In the Yakima River 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.

B. Prior to the close of negotiations with the right holder, the following should be identified and included in any required public notice:

1. The conditions of use, including the instantaneous quantities that may be exercised in trust.
2. A schedule for the use of the water right.
3. The potential for impairment of other rights.
4. Any other conditions that must be imposed upon the water right holder.

If acquired with public funds, rather than by donation, Ecology should give careful consideration to how to manage the trust water right to benefit the citizens of the state. Particular issues of concern relate to our legal and administrative ability to exercise the trust water right during periods of low flow that may require regulating junior users. See Section 2, Subsection B.

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

1. The trust water right application can be used as a trust water right agreement if the right is donated for instream flow or groundwater preservation purposes and the conditions are limited to the period 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 which describes all the terms and conditions of the conveyance of the water right from the owner of the water right to Ecology.

D. A completed trust water application should accompany an agreement:

1. The [Application to Enter a Water Right into the Trust Water Right Program](#) form is used for all trust water right acquisitions except for those funded through the state Irrigation Efficiencies Grants Program (IEGP).
2. The trust water right 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 right application form is used for initial data entry of the trust water right acquisition into the Water Right Tracking System (WRTS) and the Trust Water Right database. See Section 11.

Appendix A 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 federal grants or loans that have associated deadlines. Staff should consider processing trust water applications as a matter of high priority for the Water Resources Program.

Section 4 - Acquisition Resulting from a Publicly Funded Water Conservation Project

A. General processing of a trust water right application for a publicly funded water conservation project is as follows:

1. Application:
 - a) Within the Irrigation Efficiencies Grants Program (IEGP), local conservation districts prepare the Consolidated Application Form, with assistance from Ecology if requested, and then submit it to the appropriate Ecology regional office.
 - b) If the project is not funded through the IEGP, the [Application to Enter a Water Right into the Trust Water Right Program](#) is used.
2. Trust water right acquisitions through publicly funded water conservation projects are not subject to [RCW 90.03.380](#) [see [RCW 90.42.040\(7\)](#) and [RCW 90.38.040\(6\)](#)]. Ecology processes the IEGP application under Chapter 90.38 RCW (in the Yakima River basin), or Chapter 90.42 RCW (statewide).
3. Outside the Yakima River basin, only water rights existing prior to July 28, 1991 may be acquired into trust through water conservation projects [[RCW 90.42.020\(5\)](#)].
4. Typically the net water savings created by the publicly-funded water conservation project is acquired into the Trust Water Rights Program (TWRP). The length of a trust water acquisition under IEGP is specified in the contract between Ecology and the water right holder.
5. Public notice is required at the time of acquisition:
 - a) Ecology publishes public notice for IEGP projects. The applicant is responsible for publishing the public notice for projects not funded through IEGP.
 - b) Ecology is responsible for sending notice to:
 - (1) Potentially affected local governments. Local governments are defined as a “city, town, public utility district, irrigation district, public port, county, sewer district, or water district.”
 - (2) Appropriate state agencies.
 - (3) Federally recognized tribal governments within the area.
 - (4) Other interested parties.
 - c) If required, public notice of the SEPA threshold determination for the project should (when possible) be combined with public notice of the trust water right application.
6. Affidavits of publication regarding trust water rights should be given the same priority for review as the trust water transaction.
7. Public notice should identify the quantity of water, expressed in acre-feet per year, but is not mandatory for trust water right transactions that may be:

- a) Initiated during the engineering phase of conservation or irrigation efficiency projects; or,
- b) Subject to continuing negotiations or investigation.

Consistent with funding and construction deadlines, timely action requires making public notice at the earliest possible date. Due to the potential complexities in parallel planning, design and funding processes, it is hard to know the precise quantity of water that may be ultimately placed into trust at the appropriate time for public notice. Although not mandatory, it is recommended that the public notice identifies the reasonable maximum rate and volume of water conservation based on the estimated net water savings.

8. Use the 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 TWRP.
9. Evaluation Considerations:
 - a) Extent and Validity: The state may require evidence of a valid water right [[RCW 90.42.030\(2\)](#)]. In practice, no conservation project should be funded if the use of water isn't legally authorized by a valid water right.
 - b) Quantifying the Right for Use in Trust: Use the [Trust Water Rights Program Guidelines](#) (Ecology Publication #92-88) developed under [RCW 90.42.050](#) and [GUID-1210, DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE](#) to determine the net water savings. The quantity of water accepted into trust must represent "net water savings" from the conservation project
 - c) Impairment: An impairment analysis is required prior to exercising the trust water right [[RCW 90.42.040\(4\)](#), [RCW 90.38.040\(5\)\(a\)](#)].
 - d) Public Interest Considerations: Acquisitions through water conservation projects shall not be detrimental to the public interest [[RCW 90.42.040\(4\)](#)].

10. Documenting 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. This serves as evidence of conveyance of the water right from the holder of the water right to the state. If the right is under the jurisdiction of the Court as part of the Yakima River Adjudication, a Motion to Join Ecology to the Court Claim is also 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 Certificates of Water Right: Issue Superseding Certificates.
 - (2) For rights documented by a Water Right Claim or Certificate of Change: Issue a Certificate of Trust Water Right Acquisition. (see Appendix H
 - (3) 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, WATER RIGHTS ADMINISTRATION PROCEDURE](#).
- (1) The Trust Water Right Certificate is recorded at the state's expense.
 - (2) Any Certificate issued for a 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) and Trust Water Right database.

11. Tax Liability for Permanent Acquisitions:

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 WRTS and the trust water database. This file should include the following:
- (1) Information on the acquisition of the water right.
 - (2) Any authorized beneficial water use while the right is in trust.
 - (3) 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 temporary trust water right acquisition [[RCW 90.42.040\(2\)](#)]:
- (1) Issue a trust water right report (see Appendix G) and order including the following information:
 - Information on the acquisition of the water right.
 - Any authorized beneficial water use while the right is in trust.
 - The date or conditions under which the trust period will expire.
 - (2) The trust water right report and order are added to the existing record of the water right.
 - (3) The trust water right data are added to the trust water database and WRTS.

Section 5 - Acquisition by Short-Term Lease (five years or less)

For short-term leases of surface water within the Yakima River basin, the trust water acceptance/approval process must include an Order Pendente Lite pursuant to Pre-Trial Order # 12 of the Yakima Superior Court (Appendix I).

A. 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. Water rights held exclusively under Chapter 90.38 RCW (Yakima River Basin Trust Water Right Program) are not subject to RCW 90.03.380 [[RCW 90.38.040\(6\)](#)].
3. Water rights not held exclusively under Chapter 90.38 RCW and acquired by lease are subject to [RCW 90.03.380](#) and [RCW 90.03.390](#) [[RCW 90.42.080\(5\)](#)].
4. Public notice:
 - a) Public notice must be consistent with [RCW 90.03.280](#).
 - b) For leases of duration of five years or less, notice may be made on Ecology's website instead of in a newspaper. [[RCW 90.42.040\(5\)\(c\)](#)]
 - c) If a SEPA public notice is required, combine public notice of the SEPA determination with public notice of the trust water right application whenever possible.
 - e) Ecology must send notice to:
 - (1) Potentially affected local governments. Local governments are defined as a "city, town, public utility district, irrigation district, public port, county, sewer district, or water district." [[90.42.020 \(2\)](#)]
 - (2) Appropriate state agencies.
 - (3) Federally recognized tribal governments within the area.
 - (4) Other interested parties.
 - f) For leases of duration of five years or less, governmental notice can be sent electronically. [[90.42.040\(5\)\(c\)](#)]
 - g) Affidavits of publication for the trust water rights should receive the same priority for review as the trust water transaction.
5. Evaluation Considerations:
 - a) Extent and Validity
 - (1) Trust water right leases are subject to [RCW 90.03.380](#). [POL-1200, EVALUATION OF CHANGES AND TRANSFERS TO WATER RIGHTS](#), provides policy for changing the water right, UNLESS they are Yakima River basin trust water rights held exclusively under Chapter 90.38 RCW, which are not subject to [RCW 90.03.380](#). [[RCW 90.38.040\(6\)](#)].

- (2) When leasing a portion of a right to help meet an instream flow set in rule, 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-1120, WATER RESOURCES PROGRAM POLICY FOR CONDUCTING TENTATIVE DETERMINATIONS OF WATER RIGHTS](#), provides guidance for conducting extent and validity evaluations.
 - (4) [GUID-1210, DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE](#), provides guidance and examples helpful for quantifying water rights in the secondary reach of the trust water right.
- b) Quantifying rights to accept into the trust program.

When leasing a water right for five years or less, Ecology places the full water quantity diverted or withdrawn into trust. The right is considered exercised while in the trust program, and is available for exercising. [[RCW 90.42.080\(9\)](#) and [RCW 90.38.020\(7\)](#)].

Ecology determines the amount of water that can be accepted into trust by:

- (1) An extent and validity review (required if [RCW 90.03.380](#) applies), OR
 - (2) The highest use within the previous five years before the lease [[RCW 90.42.080\(4\)](#)], OR
 - (3) If there has been nonuse of water in the last five years, and the applicant claims sufficient cause for non-use, Ecology will review information provided by the applicant, to determine if the right is eligible to be excused from relinquishment under [RCW 90.14.140\(1\)](#). If the nonuse is excused under a qualifying exception, then the amount of water that can be accepted into trust is calculated by looking at the highest use in the most recent five year period preceding establishment of a qualifying relinquishment exception (if the exempt period is less than 5 years, look back from the date the qualifying exception was established) [[RCW 90.42.080\(10\)](#)]; OR
 - (4) If there has been nonuse of water in the last five years, and the applicant claims a qualifying exemption, Ecology will review information provided by the applicant to determine if the right is eligible for a qualifying exemption from relinquishment under [RCW 90.14.140\(2\) a or d](#). Ecology will calculate the amount of water eligible to be acquired into trust based on historical beneficial use [[RCW 90.42.080\(11\)](#)]
- c) Impairment
- (1) For short-term leases (five years or less) for instream flow purposes OUTSIDE the Yakima River basin, an impairment analysis is NOT REQUIRED, [[RCW 90.42.040\(8\)](#)].
 - (2) Within the Yakima River basin, an impairment analysis IS ALWAYS REQUIRED. Further, no water rights may be “impaired as to their exercise” or “injured in any manner whatever” by the authorization, [[RCW 90.38.040\(5\)\(a\)](#)].
- d) Public Interest Considerations

- (1) Short-term leases for instream flow purposes are not subject to public interest considerations except where a ground water right benefits a stream. [[RCW 90.42.040\(8\)](#)].
- (2) Ground water rights leased for the preservation of groundwater are subject to a public interest test.

6. Documentation

- d) 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. The file should include the following:
 - (1) Information regarding the acquisition of the water right.
 - (2) Any authorized beneficial water use while the right is in trust, and
 - (3) The date or conditions under which the trust period will expire.
- e) For rights not subject to the Yakima River Adjudication, an Order or other instrument may be issued to document the short-term trust water right acquisition, [[RCW 90.42.040\(2\)](#)].
 - (1) Issue an Order accompanied by a trust water right report (see Appendix G) describing:
 - Information regarding the acquisition of the water right.
 - Any authorized beneficial water use while the right is in trust.
 - The date or conditions under which the trust period will expire.
 - (2) Add the Trust Water Right Report and Order to the existing water right record.
 - (3) Add the trust water right data to the trust water database and WRTS.

Section 6 - Acquisition by Long-Term Lease (greater than five years)

A. To process a lease that is longer than five years:

1. The right holder completes the [Application to Enter a Water Right into the Trust Water Right Program](#).
2. Water rights acquired by leases of five years or greater duration are subject to [RCW 90.03.380](#) and [RCW 90.03.390](#) [[RCW 90.42.080\(5\)](#)], UNLESS they are Yakima Basin trust water rights held by Ecology exclusively under RCW Chapter 90.38 RCW, which are not subject to [RCW 90.03.380](#) [[RCW 90.38.040\(6\)](#)].
3. Public notice:
 - a) Must be consistent with [RCW 90.03.280](#).
 - b) The applicant pays to publish notice under [RCW 90.03.280](#).
 - c) Public notice is required prior to creating a trust water right [[RCW 90.42.040\(5\)](#)] unless the long-term lease is processed exclusively under Chapter 90.38 RCW. [RCW 90.38.040\(5\)\(b\)](#) requires public notice occur prior to exercise of the trust water right.
 - d) If SEPA is required, combine public notice of the SEPA determination with notice of the trust water right application, whenever possible.
 - e) In all instances when such notice is required, Ecology must send notice to:
 - (1) Potentially affected local governments. Local governments are defined as a “city, town, public utility district, irrigation district, public port, county, sewer district, or water district.” [[90.42.020 \(2\)](#)]
 - (2) Appropriate state agencies.
 - (3) Federally recognized tribal governments within the area.
 - (4) Other interested parties.
 - f) Affidavits of publication regarding trust water rights should receive priority for review consistent with the priority given the trust water transaction.
4. Evaluation Considerations:
 - a) Extent and Validity
 - (1) Trust water right leases are subject to [RCW 90.03.380](#), UNLESS they are Yakima Basin trust water rights held by Ecology exclusively under RCW 90.38, which are not subject to [RCW 90.03.380](#). [[RCW 90.38.040\(6\)](#)]. [POL-1200, EVALUATION OF CHANGES AND TRANSFERS TO WATER RIGHTS](#), provides policy for changes of water right.
 - (2) If a lease is to assist in achieving an established instream flow and 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\(9\)](#)] An established instream flow is a minimum or base flow adopted by rule.

- (3) [POL-1120, WATER RESOURCES PROGRAM POLICY FOR CONDUCTING TENTATIVE DETERMINATIONS OF WATER RIGHTS](#), provides guidance for conducting extent and validity evaluations.
- (4) [GUID-1210, DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE](#), provides guidance and examples helpful for calculating the quantities of water associated with the secondary reach of the trust water right.

b) Quantifying a right to accept into the trust program:

When a water right is acquired on a temporary basis, Ecology places the full water quantity diverted or withdrawn into trust. The right is considered exercised while in the trust program, and is available for exercising. [[RCW 90.42.080\(9\)](#) and [RCW 90.38.020\(7\)](#)].

Ecology determines the amount of water that can be accepted into trust by:

- (1) An extent and validity review (required if [RCW 90.03.380](#) applies), AND
- (2) The highest use within the previous five years before the lease [[RCW 90.42.080\(4\)](#)], OR
- (3) If there has been nonuse of water in the last five years, and the applicant claims sufficient cause for non-use, Ecology will review information provided by the applicant, to determine if the right is eligible to be excused from relinquishment under [RCW 90.14.140\(1\)](#). If the nonuse is excused under a qualifying exception, then the amount of water that can be accepted into trust is calculated by looking at the highest use in the most recent five year period preceding establishment of a qualifying relinquishment exception (if the exempt period is less than 5 years, look back from the date the qualifying exception was established) [[RCW 90.42.080\(10\)](#)]; OR
- (4) If there has been nonuse of water in the last five years, and the applicant claims a qualifying exemption, Ecology will review information provided by the applicant to determine if the right is eligible for a qualifying exemption from relinquishment under [RCW 90.14.140\(2\) a or d](#). Ecology will calculate the amount of water eligible to be acquired into trust based on historical beneficial use [[RCW 90.42.080\(11\)](#)]

This amount cannot be greater than the amount beneficially used in the five years prior to the lease [[RCW 90.42.080\(8\)](#) and [RCW 90.38.020\(6\)](#)]. Also, the amount cannot be greater than the extent and validity determination.

c) Impairment:

An impairment analysis IS REQUIRED for all long-term leases. In the Yakima River basin, no water rights may be “impaired as to their exercise” or “injured in any manner whatever” by the authorization [[RCW 90.38.040\(5\)\(a\)](#)]. Within the rest of the state, no water right existing at the time the trust water right is created may be impaired [[RCW 90.42.040\(4\)](#)].

d) Public Interest Considerations:

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

5. Documentation:

- a)** Issue an Order accompanied by a Trust Water Right Report of Examination (Appendix G) describing:
 - (1)** Information regarding the acquisition of the water right.
 - (2)** Any authorized beneficial water use while the right is in trust.
 - (3)** The date or conditions under which the trust period will expire.
- b)** Add the Order and Trust Water Right Report to the existing record of the water right.
- c)** Add the trust water right data to the trust water database and WRTS.

Section 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](#) UNLESS they are Yakima Basin trust water rights held by Ecology exclusively under RCW 90.38, which are not subject to [RCW 90.03.380](#). [[RCW 90.38.040\(6\)](#)]. See Subsection 5 below for considerations and procedures specific to permanent Yakima Basin trust water rights not 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 [RCW 90.03.380](#).
 - b) [POL-1120, WATER RESOURCES PROGRAM POLICY FOR CONDUCTING TENTATIVE DETERMINATIONS OF WATER RIGHTS](#), applies to the investigation of the validity and extent of water rights.
 - c) [GUID-1210, DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE](#) applies to calculating the quantities for the secondary reach of the trust water right.
3. Public Notice:
 - a) Must be consistent with [RCW 90.03.280](#).
 - b) Applicant pays for publishing notice under [RCW 90.03.280](#).
 - c) In the Yakima River basin, [RCW 90.38.040\(5\)\(b\)](#) requires that public notice occur prior to exercising a trust water right processed exclusively under Chapter 90.38 RCW.
 - d) Public notice is required prior to creating a trust water right [[RCW 90.42.040\(5\)](#)] unless processed exclusively under Chapter 90.38 RCW.
 - e) When notice is required, Ecology must send notice to:
 - (1) Potentially affected local governments. Local governments are defined as a “city, town, public utility district, irrigation district, public port, county, sewer district, or water district.” [[90.42.020 \(2\)](#)]
 - (2) Appropriate state agencies.
 - (3) Federally recognized tribal governments within the area.
 - (4) Other interested parties.
 - f) All proposed changes to adjudicated water rights in the Yakima River basin require public notice pursuant to Pre-Trial Order #12 of the Yakima County Superior Court (Appendix J).
4. Affidavits of publication for trust water rights should receive the same priority for review as the trust water transaction.
5. Trust water rights within the Yakima River basin processed exclusively under Chapter 90.38 RCW:
 - a) Extent and Validity:

No water right acquisition should be funded if the use of water is not legally authorized by a valid water right [[RCW 90.38.030\(2\)](#)]. [POL-1120, WATER](#)

[RESOURCES PROGRAM POLICY FOR CONDUCTING TENTATIVE DETERMINATIONS OF WATER RIGHTS](#), provides guidance for conducting extent and validity evaluations.

b) Quantifying the Right for Use in Trust:

Use the [Trust Water Rights Program Guidelines](#) (Ecology Publication #92-88) and [GUID-1210, DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE](#) to determine the non-consumptive and consumptive quantities in the primary and secondary reaches, respectively.

c) Impairment:

An impairment analysis is required. In the Yakima River basin, no water rights may be “impaired as to their exercise” or “injured in any manner whatever” by the authorization [[RCW 90.38.040\(5\)\(a\)](#)].

6. Documentation.

a) Use the Trust Water Right Report of Examination form (Appendix G) to document the trust water right acquisition.

b) Record a Water Right Conveyance and Assignment (Quit Claim) or Statutory Warranty Deed at the appropriate County Auditor’s Office as proof of conveyance of the water right from the seller to the state. If the right is under the jurisdiction of the Yakima River Adjudication, Ecology must file a Motion to Join Ecology to the Court Claim.

c) Issue a Superseding Certificate to document the permanent trust water right acquisition [[RCW 90.42.040\(2\)](#), [RCW 90.38.040\(1\)](#)].

d) 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.

(2) For rights documented by a water right claim or certificate of change: Issue a Certificate of Trust Water Right Acquisition. (Appendix H)

e) Certificate(s) are recorded with the County Auditor in accordance with [RCW 90.03.330](#) and [PRO-1000, WATER RIGHTS ADMINISTRATION PROCEDURE](#).

(1) The Trust Water Right Certificate is recorded at state expense;

(2) The water right holder pays to record any certificate issued to document the portion of a water right retained.

f) File the Certificate in the appropriate water right file.

g) Update the Water Right Tracking System (WRTS) and Trust Water Right database.

7. Tax Liability for Permanent Acquisitions:

a) 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](#).

Section 8 - Donation of a Water Right

The proposed use of the prospective trust water right determines how we processing a donated water right.

1. If the donation is for instream flow purposes, proceed to Subsection 8.A, Procedures for Donations for Instream Flow Purposes.
 2. If the donation is for a purpose other than instream flow, proceed to Subsection 8.B, Procedures for Donation of Water Rights for Purposes Other than Instream Flow.
- A. Procedures for Donations for Instream Flow Purposes.
1. Applications:
 - (a) Donors must complete the Application to Enter a Water Right into the Trust Water Right Program. Applicants for donations under [RCW 90.42.080\(1\)\(b\)](#) or [RCW 90.38.020\(1\)\(b\)](#) must also provide information documenting their water use for the most recent five-year period.
 - (b) No application fee is required for donations of trust water rights [\[RCW 90.03.470\(3\)\(c\)\(i\)\]](#).
 2. Public Notice:
 - a) Public notice is required for all donations when they are created except for those that are managed exclusively under Chapter 90.38. RCW. [\[RCW 90.38.040\(5\)\(b\) and \(c\)](#) and [RCW 90.42.040\(5\) and \(8\)\]](#).
 - b) Ecology must send notice to [\[RCW 90.42.040\(5\)\(b\)\]](#):
 - (1) Potentially affected local governments. Local governments are defined as a “city, town, public utility district, irrigation district, public port, county, sewer district, or water district.” [\[90.42.020 \(2\)\]](#)
 - (2) Appropriate state agencies.
 - (3) Federally recognized tribal governments within the area.
 - (4) Other interested parties.
 - c) For donations, governmental notice may be made by email.
 3. Processing Donations for Instream Flow Purposes:
 - d) Ecology processes donations under one or more of the following: [RCW 90.38.020\(1\)\(b\), \(3\), \(4\), \(5\), or \(7\)](#), or [RCW 90.38.040\(5\)\(a\), \(b\), \(c\), RCW 90.42.040, RCW 90.42.080\(1\)\(b\), \(3\), \(4\), \(5\), and \(9\)](#).
 - e) Extent and Validity:
 - (1) The provisions of [RCW 90.03.380](#) and [RCW 90.03.390](#) do not apply to donations for instream flow purposes, or to preserve surface or groundwater resources [\[RCW 90.38.040\(6\)](#) and [RCW 90.42.080\(5\)\]](#).
 - (2) If a portion of a water right is donated and it will help achieve an adopted instream flow, then an extent and validity evaluation IS NOT performed on the portion retained by the water right holder [\[RCW 90.42.040\(9\)\]](#).

f) When quantifying a water right to accept into the trust program, donations for instream flows are limited to the highest use within the previous five years, less any quantity of water that will be used by the donor for any other purpose [[RCW 90.42.080\(4\)](#), [RCW 90.38.020\(4\)](#)].

Ecology determines the amount of water that can be accepted into trust by:

- (1) The highest use within the previous five years before the donation [[RCW 90.42.080\(4\)](#)], OR
- (2) If there has been nonuse of water in the last five years, and the applicant claims sufficient cause for non-use, Ecology will review information provided by the applicant, to determine if the right is eligible to be excused from relinquishment under [RCW 90.14.140\(1\)](#). If the nonuse is excused under a qualifying exception, then the amount of water that can be accepted into trust is calculated by looking at the highest use in the most recent five year period preceding establishment of a qualifying relinquishment exception (if the exempt period is less than 5 years, look back from the date the qualifying exception was established) [[RCW 90.42.080\(10\)](#)]; OR
- (3) If there has been nonuse of water in the last five years, and the applicant claims a qualifying exemption, Ecology will review information provided by the applicant to determine if the right is eligible for a qualifying exemption from relinquishment under [RCW 90.14.140\(2\) a or d](#). Ecology will calculate the amount of water eligible to be acquired into trust based on historical beneficial use [[RCW 90.42.080\(11\)](#)]

(Exercise of the trust water right for instream flow purposes is not required to prevent relinquishment of the donated water right accepted into the TWRP [[RCW 90.42.040\(6\)](#)].)

- (5) The following materials should be reviewed to verify the amount of water use in the five years prior to the donation:
 - The application form.
 - The supplemental information showing water diversion, or beneficial use rates and quantities.
 - Any readily available aerial photography (Ecology records, Google, or Microsoft)
 - Readily available public records, such as county assessor's records.

g) Impairment:

- (3) An impairment analysis is not required prior to accepting a donation [[RCW 90.38.020\(1\)\(b\)](#) and [RCW 90.42.080\(1\)\(b\)](#)]
- (4) Within the Yakima River basin, trust water rights managed exclusively under Chapter 90.38 RCW, an impairment review is performed prior to their exercise. [[RCW 90.38.040\(5\)\(a\)](#) and [RCW 90.38.902](#)]. No water rights may be “impaired as to their exercise” or “injured in any manner whatever” by the authorization [[RCW 90.38.040\(5\)\(a\)](#)].
- (5) Notwithstanding Subsections (1) and (2) above, claims of impairment require Ecology to perform impairment evaluations:

- Claims of impairment against a trust water right may be made by other water right holders when the trust water right is exercised [[RCW 90.38.020\(4\)](#) and [RCW 90.42.080\(4\)](#)].
- If Ecology finds that use of a trust water right has impaired a pre-established water right, the trust water right must be modified or terminated to eliminate the impairment [[RCW 90.42.040\(4\)](#)].
- If necessary to resolve impairment to an existing water right, Ecology will modify the trust water right consistent with Section 10.

h) Public Interest Considerations:

- (6) Temporary and permanent donations for instream flow purposes in accordance with [RCW 90.42.080\(1\)\(b\)](#) are NOT subject to public interest considerations. [[RCW 90.42.040\(8\)](#)]
- (7) Donations for instream flow purposes held exclusively under Chapter 90.38 RCW within the Yakima River basin are NOT subject to public interest considerations. HOWEVER, where an approved Chapter 90.82 RCW watershed plan (currently WRIA 37 and 38) calls for acquiring trust water rights in an area, the acquisition shall be consistent with that plan to the extent practicable and subject to legislative appropriation [[RCW 90.38.040\(3\)](#)].

2. Documentation

a) Temporary donations are acknowledged in letter form similar in content to the attached template (Appendix “F”), through an Order, or other instrument. The letter must contain an explicit statement of Ecology’s acceptance of the water right into the trust program. This letter is not proof of the validity or quantity of the water right.

b) Permanent donations:

- (1) Record a Water Right Conveyance and Assignment (Quit Claim) or Statutory Warranty Deed at the appropriate County Auditor’s Office. This serves as evidence of conveyance of the water right from the donor to the state. 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 if the trust water right originates from a Certificate of Water Right; or,
- (3) Issue a Certificate of Trust Water Right Acquisition (Appendix H -- Template) if the right is documented by a Water Right Claim or Certificate of Change consistent with [PRO-1000, WATER RIGHTS ADMINISTRATION PROCEDURE](#). The Certificate of Trust Water Right should be filed and recorded against the parcel number with the original point of diversion.

3. A donated water right does not need to be exercised while it is in the TWRP.

4. Instream flow trust water donations may be eligible for a federal income tax deduction [[RCW 90.38.020\(5\)](#) and [RCW 90.42.080\(7\)](#)].

Advise the water right donor that the permanent donation of a water right for instream flow purposes may be tax deductible. [[RCW 90.42.080\(7\)](#)].

B. Procedures for Donation of Water Rights for Purposes Other than Instream Flow.

1. The application used for donations or gifts is the Application to Enter a Water Right into the Trust Water Right Program.
2. No application fee is required for donations of trust water rights [[RCW 90.03.470\(3\)\(c\)\(i\)](#)].
3. Public Notice:
 - a) Public notice must be made when the trust water right is created [[RCW 90.42.040\(5\)](#)]. Public notice is required to comply with [RCW 90.03.280](#) , however for donations it may be posted on Ecology’s website rather than in a newspaper. The notice should clearly state that the purpose is to establish a trust water right and include the purpose of use, place of use, point of diversion, and other relevant information.
 - b) If the donation is made under [RCW 90.38.020\(1\)\(a\)](#), and the water right within the Yakima River basin is managed exclusively under Chapter 90.38 RCW, public notice is not required prior to creation but must be made prior to exercise of the trust water right.
4. Extent and Validity
 - a) Trust water rights donated for purposes other than instream flows are subject to [RCW 90.03.380](#), UNLESS held by Ecology exclusively under Chapter 90.38 RCW [[RCW 90.38.040\(6\)](#)]. [POL-1200, EVALUATION OF CHANGES AND TRANSFERS TO WATER RIGHTS](#), provides policy for changes of water right.
 - b) [POL-1120, WATER RESOURCES PROGRAM POLICY FOR CONDUCTING TENTATIVE DETERMINATIONS OF WATER RIGHTS](#), provides guidance for conducting extent and validity evaluations.
 - c) [GUID-1210, DETERMINING IRRIGATION EFFICIENCY AND CONSUMPTIVE USE](#), provides guidance and examples helpful for quantifying the water consumptively used and the associated conveyance and application losses.
5. Quantifying the water right to accept into the trust program:
 - a) The temporary trust water right may be exercised up to the full extent of the right [[RCW 90.42.080\(9\)](#) and [RCW 90.38.020\(7\)](#)]. For permanent trust water right donations, the determination of extent and validity of the donated water right, using the guidance in Subsection 4 above, determines quantities.
6. Impairment:
 - a) An impairment analysis is required [[RCW 90.03.380](#)], UNLESS the donation is held by Ecology exclusively under Chapter 90.38 RCW.
 - b) If another water right holder files a claim of impairment after the trust water right is exercised:
 - (1) Ecology will investigate the allegation.
 - (2) Use of the trust water right may cease or be modified to avoid the impairment [[RCW 90.42.040\(4\)](#), [RCW 90.38.020\(4\)](#)].
 - (3) Ecology’s decision regarding the allegation of impairment is an appealable decision.
7. Public interest

Public interest is a consideration for all water right donations for purposes other than for instream flow purposes [[RCW 90.42.040\(4\)](#)], UNLESS held by Ecology exclusively under Chapter 90.38 RCW. Yakima River basin trust rights under Chapter 90.38 RCW do not require consideration of public interest prior to creating or exercising the trust water right.

8. Documentation:

- a)** Temporary donations are acknowledged by a letter similar in content to the attached template (Appendix “F”), through an Order, or other instrument. The letter must contain an explicit statement of Ecology’s acceptance of the water right into the trust water rights program. Acceptance of the donation is not evidence of the validity or quantity of the water right.
- b) Permanent donations:**
 - (1)** Record a Water Right Conveyance and Assignment (Quit Claim) or Statutory Warranty Deed at the appropriate County Auditor’s Office. This serves as evidence of conveyance of the water right from the donor to the state. 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 if the trust water right originates from a Certificate of Water Right.
 - (3)** Issue a Certificate of Trust Water Right Acquisition (Appendix H -- Template) 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, WATER RIGHTS ADMINISTRATION PROCEDURE](#). The Certificate of Trust Water Right should be filed and recorded against the parcel number containing the original point of diversion.

Section 9 - Water Right Acquisitions through Water Savings Identified when Processing an Application for Change

1. Ecology may identify incidental water savings when it processes an application for change under [RCW 90.03.380](#), [RCW 90.03.390](#), or [RCW 90.44.100](#). The applicant may place the identified savings into the Trust Water Right Program.
2. If interest is shown, the applicant should then be advised to file an [Application to Enter a Water Right into the Trust Water Right Program](#).
3. If offered, the water right can be placed into the trust program through the procedures in Sections 4 through 8, depending on the type and nature of the acquisition.

Section 10 - Modification or Extension of an Existing Trust Water Right:

A. Modification:

Trust water rights are created as a result of agreements that convey water right to Ecology on a temporary or permanent basis. Even when permanent, the agreements may not be unconditional. If conditions change or if Ecology or the original water right holder invokes a condition of the agreement, modification of the trust water right may be appropriate. In some cases, such as where exercising a trust water right impairs another water right, Ecology is directed to resolve impairment from exercising a trust water right by modifying the trust water right.

[RCW 90.42.040\(4\)](#) and [RCW 90.38.020\(4\) and \(6\)](#) provide authority to modify trust water rights. The procedures used for modifying a trust water right are the same procedures used to create the trust water right (see Sections 4 through 8). Determine what type of process was used to create the trust water right, and follow the same procedures for public notice and changing the water rights, as appropriate.

B. Extension:

- 1.** Requests to extend short-term leases (Section 5), long-term leases (Section 6), or temporary donations (Section 8) must be processed prior to expiration of the previous lease or temporary donation.
- 2.** If the lease or temporary donation agreement has not lapsed, a new trust water right application is not required.
- 3.** If a lease agreement is renegotiated and extended in accordance with the funding program's rules, then public notice should be completed in accordance with Subsection 5.3 or Subsection 6.3.
- 4.** If extending a temporary donation is requested by letter, a new trust water right application is not required. Review of the request should be completed per Section 8, including public notice if the trust water right is to be exercised. Public notice should be completed in accordance with the procedures in Subsection 8.A.3 or Subsection 8.B.3.
- 5.** After public notice Ecology may decide whether to extend the lease or donation. Include the decision in a letter sent to the party requesting the extension and to anyone who commented in response to the public notice. The letter is in the form of an Order and should include appropriate appeal language.

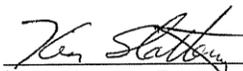
Section 11 - Trust Water Right Data

A. Record all water right applications, transactions, and stages of progress in the WRTS database.

1. The WRTS tracker will give a unique identification number to each trust water form or Application to Transfer Water into the Trust Water Right Program, and enter it into the WRTS database.
2. Stages and progress (such as publication of the public notice) will be tracked in the WRTS database.

B. Trust Water Right Acquisition Data

1. The Trust Water Right Coordinator (or other delegated party) creates a new record in the Trust Water Right database (or, the Interim Trust Database) once Ecology issues the letter acknowledging a donation or the Report of Examination for the transfer. When applicable, this record identifies the intended final recipient of public money, such as Water Right Owner or Former Water Right Owner. Organizations such as the Washington Water Trust, Washington Rivers Conservancy, or the Walla Walla Water Alliance may be entered as Trustee for the water right owner/payee.
2. The Trust Water Right Coordinator enters other details and data pertaining to the trust water right into the database.
3. The Database Funds Administrator enters funding information related to trust water right acquisitions into the database. Through coordination with the regional trust water right coordinator, the database funds administrator will enter the amount and source of funding for the trust water right.



Ken Slattery, Program Manager
Water Resources Program

Appendix A

Checklist for Trust Water Right Application Review

Use this checklist to determine completeness of Trust Water Right Application

APPLICATION TO ENTER A WATER RIGHT INTO THE TRUST WATER RIGHT PROGRAM

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:

1 Applicant Information (Section 1)

- 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 (Section 2)

- 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 [[RCW 90.42.080\(4\)](#)], except for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, and for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [[RCW 90.42.080\(10\)](#) and (11)]
 - 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 [[RCW 90.42.080\(8\)](#)], except for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the

date when nonuse was excused, and for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [[RCW 90.42.080\(10\)](#) and (11)].

- (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. Potential evidence includes:
 - 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? (Section 3)
 - 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:* (Section 5, 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:* Proposed (Section 6, Part B)
 - a) A water body or other place that is expected to benefit while the water right is in trust should be identified.
 - b) Whenever possible, a surface water body that is to benefit from placing a water right into trust should be identified.
- 6 Signatures: (Section 8) Make sure that all 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 [RCW 90.03.470\(3\)\(c\)](#) and the transaction is subject to [RCW 90.03.380](#).

(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
 - * Determination of Non-significance
 - * Mitigated Determination 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. Process to certify a trust water right.

Use Appendix H

Template for Certificate of Trust Water Right Acquisition, 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.

Trust water right files are archived through the same process as are other water right files

Appendix B

Summary¹

Matrix of Trust Water Transaction Types, Processes, and Considerations

¹ This matrix contains only summary information to help distinguish among each transaction type. Refer to Sections 4 through 8 for specific guidance, processes, and considerations that apply to each transaction type. The summary information for the Yakima Basin trust water rights applies to transaction that are acquired and managed *exclusively* under RCW 90.38.

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Source of Trust Water Right	Permanent acquisition of all or part of a water right. [RCW 90.42.080(1)(a); RCW 90.38.020(1)(a)]	Short-Term lease of all or part of a water right. [RCW 90.42.080(1)(a); RCW 90.38.020(1)(a)]	Long-Term lease of all or part of a water right. [RCW 90.42.080(1)(a); RCW 90.38.020(1)(a)]	Water Right holder donates all or part of a water right. [RCW 90.42.080(1)(b); RCW 90.38.020(1)(b)]	<u>Statewide</u> : Conveyance of all or a portion of net water savings of water rights existing as of July 28, 1991. TWR results from operational or system improvements. [RCW 90.42.080(1)(a)]; <u>Yakima Basin</u> : In exchange for financial assistance, water users shall convey to Ecology trust water rights resulting from the assistance. [RCW 90.38.030(1)]
Application	Application to Enter a Water Right into the Trust Water Right Program	Application to Enter a Water Right into the Trust Water Right Program	Application to Enter a Water Right into the Trust Water Right Program	Application to Enter a Water Right into the Trust Water Right Program	Consolidated Application for Irrigation Efficiencies Grants Program/Trust water Rights Program
Notice – Public and Agencies	<u>Statewide</u> : Consistent with 90.03.280 and prior to creation of the TWR. [RCW 90.42.040(5)] <u>Yakima Basin</u> : Notice is not required until the TWR is exercised. [RCW 90.38.040(5)(b)]	<u>Statewide</u> : Notice is required prior to creation of the TWR. [RCW 90.42.040(8)] Instead of using a newspaper, the notice may be posted on Ecology’s website, and local governments may be notified by email. [RCW 90.42.040(5)(c)] <u>Yakima Basin</u> : Notice is NOT required until the TWR is exercised. [RCW 90.38.040(5)(c)]	<u>Statewide</u> : Notice is required consistent with 90.03.280 and prior to creation of the TWR. [RCW 90.42.040(5)] <u>Yakima Basin</u> : Notice is not required until the TWR is exercised. [RCW 90.38.040(5)(b)]	<u>Statewide</u> : Notice is required prior to creation of the TWR. [RCW 90.42.040(5) and (8)] Instead of using a newspaper, the notice may be posted on Ecology’s website, and local governments may be notified by email. [RCW 90.42.040(5)(c)] <u>Yakima Basin</u> : Notice is not required until he TWR is exercised. [RCW 90.38.040(5)(b) and (c)]	<u>Statewide</u> : Consistent with 90.03.280 and prior to creation of the TWR. [RCW 90.42.040(5)] <u>Yakima Basin</u> : Notice is not required until the TWR is exercised. [RCW 90.38.040(5)(b) and (c)]

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Extent and Validity of Water Right	<p>Statewide: Extent and validity based on RCW 90.03.380.</p> <p><u>Yakima Basin</u>: Extent and Validity not required, but must be a valid right. [RCW 90.38.030(2), and 90.38.040 (6)]</p>	<p>Statewide: Not more than the lesser of : 1) Extent and validity based on RCW 90.03.380, OR 2) the highest use within the previous five years before the lease [RCW 90.42.080 (5) and (8)], ----OR</p> <p>3) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR</p> <p>4) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)]</p> <p><u>Yakima Basin</u>: Must be a valid right. [RCW 90.38.030(2)]</p>	<p>Statewide: Not more than the lesser of :1) Extent and validity based on RCW 90.03.380, OR 2) the highest use within the previous five years before the lease, [RCW 90.42.080 (5) and (8)], ---OR</p> <p>3) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused. [RCW 90.42.080 (11)], OR</p> <p>4) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)]</p> <p><u>Yakima Basin</u>: Must be a valid right. [RCW 90.38.030(2)]</p>	<p>Statewide and <u>Yakima Basin for Instream Flow</u>: RCW 90.03.380 DOES NOT apply; therefore, a determination of extent and validity is not applicable. [RCW 90.42.080 (4) and (5), and RCW 90.38.040(6)]</p> <p>However, quantification of the donation is based upon, 1) the highest use within the previous five years before the lease, 2) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR</p> <p>3) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)]</p> <p>Statewide: For all other purposes, extent and validity is based on 1) RCW 90.03.380. [RCW 90.42.080(5)], OR, 2) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR, 3) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)]</p> <p><u>Yakima Basin</u>: RCW 90.03.380 DOES NOT apply; therefore, a determination of extent and validity is not applicable. [RCW 90.38.040(6)]</p>	<p>Statewide: May require evidence of a valid water right. [RCW 90.42.030(2)]</p> <p><u>Yakima Basin</u>: Must be a valid water right. [RCW 90.38.030(2)]</p>

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Impairment Analysis	Statewide: Prior to authorizing change of purpose. [RCW 90.03.380] and exercising the TWR. [RCW 90.42.040(4)] <u>Yakima Basin:</u> Prior to exercising the TWR. [RCW 90.38.040(5)(a)]	Statewide: When requested RCW 90.42.080(8)] <u>**Yakima Basin:</u> NOT required prior to creation or exercise. [RCW 90.38.040(5)(c)]	Statewide: Prior to authorizing change of purpose. [RCW 90.03.380] and exercising the TWR. [RCW 90.42.040(4)] <u>Yakima Basin:</u> Prior to exercising the TWR. [RCW 90.38.040(5)(a)]	Statewide: Prior to exercising the TWR. [RCW 90.42.040(8)] <u>Yakima Basin:</u> Prior to exercising the TWR. [RCW 90.38.040(5)(a)]	Statewide: Prior to exercising the TWR. [RCW 90.42.040(4)] <u>Yakima Basin:</u> Prior to exercising the TWR. [RCW 90.38.040(5)(a)]
Quantification of Water Placed in Trust	<u>Statewide:</u> Quantify using extent of validity. [RCW 90.03.380] <u>Yakima Basin:</u> Quantify using extent of validity. [RCW 90.03.380] ? Schedule of net water savings. [RCW 90.38.040(4)]	<u>Statewide:</u> Not more than the lesser of: 1) Not more than the greatest water use within the five-years prior to the trust water lease, less any water used by the right holder. [RCW 90.42.080(8)] , AND 2) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR 3) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)] <u>Yakima Basin:</u> Not more than the greatest water use within the five-years prior to the trust water lease, less any water used by the right holder. [RCW 90.38.020(6)]	<u>Statewide:</u> Not more than the lesser of: 1) the quantities from the extent and validity determination AND2) the greatest water use within the five-years prior to the lease, less any water used by the right holder. [RCW 90.03.380 and RCW 90.42.080(8)] OR, 3) for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR, 4) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)] <u>Yakima Basin:</u> 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. [RCW 90.38.020(6)]	<u>Statewide and Yakima Basin Instream:</u> 1) Permanent and temporary donations for instream flows are limited to the greatest water use within the five-years prior to the donation, less any water retained by the donor. [RCW 90.42.080(4) , RCW 90.38.020(4) and (7)], OR, 2)for rights subject to certain non-use exceptions, the amount of water eligible to put into trust will be calculated by looking at the highest use in the most recent 5 year period prior to the date when nonuse was excused, [RCW 90.42.080 (10)], OR 3) for municipal and hydropower rights the amount of water eligible to be acquired shall be based on historical beneficial use. [RCW 90.42.080 (11)] <u>Statewide:</u> For all other purposes, quantification is based on extent and validity. [RCW 90.42.080(5)] , Add 2) and 3) <u>Yakima Basin:</u> For all other purposes, full extent of the right. [RCW 90.38.020(7)]	<u>Statewide:</u> Net water savings created by the water conservation project as determined by the state and the right holder prior to funding. [RCW 90.42.030(2)] <u>Yakima Basin:</u> In exchange for financial assistance, water users shall convey to Ecology trust water rights resulting from the assistance. [RCW 90.38.030(1)] Schedule of net water savings. [RCW 90.38.040(4)]

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Public Interest Evaluation	<u>Statewide</u> : Must not impair the public interest. [RCW 90.42.040(4)] <u>Yakima Basin</u> : Consistent with adopted watershed plan, if practicable. [RCW 90.38.040(3)]	<u>Statewide</u> : Not a consideration. [RCW 90.42.040(8)] <u>Yakima Basin</u> : Consistent with adopted watershed plan, if practicable. [RCW 90.38.040(3)]	<u>Statewide</u> : Must not impair the public interest. [RCW 90.42.040(4)] <u>Yakima Basin</u> : Consistent with adopted watershed plan, if practicable. [RCW 90.38.040(3)]	<u>Statewide</u> : For instream flow, not a consideration. [RCW 90.42.040(8)] For donations for other than instream flows, public interest evaluation is required prior to creation. 90.42.040 (4) (a) &(c) <u>Yakima Basin</u> : Consistent with adopted watershed plan, if practicable. [RCW 90.38.040(3)]	<u>Statewide</u> : Must not impair the public interest. [RCW 90.42.040(4)] State shall obtain public benefits [RCW 90.42.030(1)] <u>Yakima Basin</u> : Consistent with adopted watershed plan, if practicable. [RCW 90.38.040(3)]
Quantification of Water Right Remaining with Right Holder	<u>Statewide</u> : Must not exceed historic water right less water placed into Trust [RCW 90.03.380(1)] <u>Yakima Basin</u> : Same as statewide.	<u>Statewide</u> : Must not exceed historic water right less water placed into Trust RCW 90.42.080(8) <u>Yakima Basin</u> : Must not exceed most recent 5-yr use, less water placed into Trust. [RCW 90.38.020(6) and (7)]	<u>Statewide</u> Must not exceed historic water right less water placed into Trust RCW 90.42.080(8) <u>Yakima Basin</u> : Must not exceed most recent 5-yr use, less water placed into Trust. [RCW 90.38.020(6) and (7)]	<u>Statewide</u> Must not exceed historic water right less water placed into Trust RCW 90.42.080(8) <u>Yakima Basin</u> : Must not exceed most recent 5-yr use, less water placed into Trust. [RCW 90.38.020(4) and (7)]	<u>Statewide</u> : Must not exceed historic water right less water placed into Trust RCW 90.42.030(2) <u>Yakima Basin</u> : If leased, must not exceed most recent 5-yr use, less water placed into Trust. [RCW 90.38.020(6) and (7)]
Decision Document	<u>Statewide</u> : Trust Water Right Report with Order ROE. [RCW 90.03.380 (1)] <u>Yakima Basin</u> : Trust Water Right Report with Order. ROE[RCW 43.27A.190(6)]	<u>Statewide</u> : Trust Water Right Report with an Order ROE [RCW 90.03.380 (1)] <u>Yakima Basin</u> : Trust Water Right Report with Order.ROE [RCW 43.27A.190(6)]	<u>Statewide</u> : Trust Water Right Report with an Order ROE [RCW 90.03.380 (1)] <u>Yakima Basin</u> : Trust Water Right Report with Order.ROE [RCW 43.27A.190(6)]	Acknowledge by letter. If the TWR is to be authorized for a new purpose of use a Trust Water Right Report is issued [RCW 90.42.040(2)] Yakima Basin: Acknowledge by letter.	<u>Statewide</u> : Trust Water Right Report with and Order.ROE [RCW 90.42.040(2)] <u>Yakima Basin</u> : Trust Water Right Report with Order.ROE [RCW 43.27A.190(6)]
Final Document to the Trust Water Right Program and to the Right Holder	<u>Statewide</u> : Trust Water Certificate. Superseding Certificate or Certificate of Change to right holder for any remainder of the water right. RCW 90.42.040(2) Update the deed. <u>Yakima Basin</u> : Same as above. [RCW 90.38.040(2)]	<u>Statewide</u> : Trust Water Certificate. Contract Agreement signed by the water right holder and the Water Resources Program. [RCW 90.42.040(2)] <u>Yakima Basin</u> : Follow Acquavella PTO #6 and 12.	<u>Statewide</u> : Trust Water Certificate. Contract Agreement signed by the water right holder and the Water Resources Program. [RCW 90.42.040(2)] <u>Yakima Basin</u> : Same as statewide unless Acquavella procedures supersede. [RCW 90.38.020(2)]	<u>Statewide</u> : For permanent donations, a Trust Water Certificate is issued to the State of Washington and a Superseding Certificate or Certificate of Change is issued to the donor for any remainder of the water right. For temporary donations, the acknowledgement letter. [RCW 90.42.040(2)] <u>Yakima Basin</u> : For permanent, same as statewide unless Acquavella procedures supersede. For temporary, follow Acquavella PTO #6 and 12.	<u>Statewide</u> : For permanent acquisitions, a Trust Water Certificate is issued to the State of Washington and a Superseding Certificate or Certificate of Change is issued to the water right holder for any remainder of the water right. For temporary donations, the acknowledgement letter. [RCW 90.42.040(2)] <u>Yakima Basin</u> : For permanent, same as statewide unless Acquavella procedures supersede. For temporary, follow Acquavella PTO #6 and 12.

	Purchase (permanent acquisition) and federal contracts	Short-Term lease (does not exceed five-years in duration)	Long-Term Lease (a period that exceeds five-years)	Donation	Water Conservation Project
Exercise of Trust Water Right	<p>Statewide: A right acquired for instream flow purposes must be exercised accordingly. [RCW 90.42.080(1)(a) & (2)] The right will be considered to be exercised when created. RCW 90.42.040 (4) (c)</p> <p><u>Yakima Basin</u>: Ecology may make arrangements to exercise to the fullest extent possible [RCW 90.38.020(2)]</p>	<p>Statewide: A right acquired for instream flow purposes must be exercised accordingly. [RCW 90.42.080(1)(a)] The right will be considered to be exercised when created. RCW 90.42.040 (4) (c)</p> <p><u>Yakima Basin</u>: Ecology may make arrangements to exercise to the fullest extent possible [RCW 90.38.020(2)]</p>	<p>Statewide: A right acquired for instream flow purposes must be exercised accordingly. [RCW 90.42.080(1)(a)] The right will be considered to be exercised when created. RCW 90.42.040 (4) (c)</p> <p><u>Yakima Basin</u>: Ecology may make arrangements to exercise to the fullest extent possible [RCW 90.38.020(2)]</p>	<p>Statewide: Shall be held or authorized for beneficial public use. [RCW 90.42.040(1)] The right will be considered to be exercised when created. RCW 90.42.040 (4) (c)</p> <p><u>Yakima Basin</u>: Ecology may make arrangements to exercise to the fullest extent possible [RCW 90.38.020(2)]</p>	<p>Statewide: Public benefits to be obtained to be at least comparable to public moneys expended. [90.42.030(1) RCW]</p> <p><u>Yakima Basin</u>: Exercised to the full extent possible [90.38.020(2) RCW]</p>
Modification of a trust water right	<p>Statewide: Consistent with the purposes associated with public funding. To obtain the maximum net benefits [RCW 90.54.020(2)]</p> <p>If impairment is found while exercising the TWR.[RCW 90.42.040(4)]</p>	<p>Statewide: Consistent with the purposes associated with public funding. To obtain the maximum net benefits. [RCW (90.54.020(2)]</p> <p>If impairment is found while exercising the TWR. [RCW 90.42.080(8)]</p>	<p>Statewide: Consistent with the purposes associated with public funding. To obtain the maximum net benefits [RCW 90.54.020(2)]</p> <p>If impairment is found while exercising the TWR. [RCW 90.42.040(4)]</p>	<p>Statewide: To obtain the maximum net benefits [RCW 90.54.020(2)]</p> <p>If not donated for instream flows and impairment is found while exercising the TWR. [RCW 90.42.040(4)]</p> <p>If donated for instream flow purposes, use may be modified to avoid impairment [RCW 90.42.080(4)]</p>	<p>Statewide: Consistent with the purposes associated with public funding. If impairment is found while exercising the TWR. [RCW 90.42.040(4)]</p> <p>To obtain the maximum net benefits. [RCW 90.54.020(2)]</p>
11/20010					

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.

“**Determination of extent and validity**” means Ecology’s conclusion about the lawful origination of, and amounts of water associated with, an historical beneficial use of water. This determination is required by [RCW 90.03.380](#) when a water right is proposed for changed or transfer.

“**Exercise the trust water right**” means to use the trust water right for the purpose(s) authorized when it was placed into the trust water program. Trust water rights for instream flow purposes may, in times of short supply, require protection from junior water rights. That protection, through regulation by a water master or other Ecology regulatory order, is evidence of the exercise of the trust 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.¹

“**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. For donations and leases of 5 years or less for instream flows, the notice can be posted on Ecology’s website rather than published in a newspaper.

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.² Local governments are defined as a “city, town, public utility district, irrigation district, public port, county, sewer district, or water district.” For donations and leases of 5 years or less, this notice can be sent by email.

Alternatively, “public notice” means the notice required by [RCW 90.03.280](#) when the trust water right is subject to [RCW 90.03.380](#).

¹ [RCW 90.42.020\(2\)](#)

² [RCW 90.42.040\(5\)](#)

GUIDANCE FOR PROCESSING AND MANAGING TRUST WATER RIGHTS

“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 right 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, the 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.

“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.³

“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, 1991.⁴ Water conservation projects may include changes in point of diversion/withdrawal or place of use to accommodate new conveyances and distribution systems.⁵

³ [RCW 90.38.010\(3\)](#); [RCW 90.42.020\(3\)](#)

⁴ [RCW 90.42.020\(5\)](#)

⁵ [RCW 90.42.030\(2\)](#)

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»

Copies scanned & e-mailed to Department of Revenue:
--

Date: _____	_____	_____
-------------	-------	-------

Initial: _____	_____	_____
<i>Chg. Application</i>	<i>ROE/ROD</i>	<i>Assignment</i>

COUNTY «CNTY»

WRIA «WRIA» WRTS No. «WRATSNo»

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 include⁶:
- (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.

⁶ Due to the variety of potential trust water transactions, the contents and requirements to provide public notice will vary

Appendix F

Model letter for Acceptance of a Trust Water Right Donation

November 22, 2011

Name
Address
City, ST xxxxx-xxxx

Dear Name,

The purpose of this letter is to acknowledge Ecology's acceptance of your donation to the Washington State Trust Water Right Program. The trust water right has been assigned the control number . Please refer to that number when corresponding with us about this trust water right.

The Department of Ecology, pursuant to RCW 90.42.080(1)(b), acknowledges your donation in the amount of gallons per minute and acre-feet per year. The purpose of the donation is to benefit instream flow in the XXXXX River] from Date to Date.

[Use if the donation is for a portion of the water right.] 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.

RCW 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.

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

Ecology's acceptance of the donated water right into the trust water right program 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 accepted into the trust water program and for the original purposes.

If, prior to expiration of this temporary donation, you would like to extend the temporary donation, please send us a written request. Also, if you wish to modify any terms of your donation, your letter must include the new terms. Ecology will review your request and any new or modified terms and conditions and will notify you whether the donation can be extended.

If you have questions or concerns, please call the [trust water coordinator] at [phone number]_____.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Pollution Control Hearings Board 1111 Israel RD SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608

Please send a copy of your appeal to:

_____, Section Manager

You have a right to appeal this decision. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted

*For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>*

Sincerely,

Signature Block

Water Resources Program

cc:

Appendix G

Trust water right report form



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

**TRUST WATER RIGHT
REPORT OF EXAMINATION**
Change of Purpose and Place of Use
WRTS File #:

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
---------------	-----------	------------	-----------------

NAME OF PARTY CONVEYING RIGHT TO TRUST WATER RIGHTS PROGRAM

ADDRESS/STREET	CITY/STATE	ZIP CODE
----------------	------------	----------

TRUST WATER RIGHT ATTRIBUTES

SOURCE

TRIBUTARY OF (IF SURFACE WATERS)

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
-------------------------------	----------------------------	----------------------------

QUANTITY, TYPE OF USE, PERIOD OF USE

AFFECTED REACHES

APPROXIMATE LOCATION OF HISTORIC DIVERSION / WITHDRAWAL
feet and feet from the of Section , T. N., R. E.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE [E. or W.] W.M. E.	WRIA	COUNTY
PARCEL NUMBER	LATITUDE	LONGITUDE		DATUM	

DESCRIPTION OF PLACE OF USE
[See Attachment 1 for map of the trust water right location]

PROJECT SUMMARY

TRUST WATER RIGHT TERM

BEGIN DATE	END DATE
------------	----------

**PORTION OF WATER RIGHT
NOT PLACED INTO TRUST
WRTS File #:**

PRIORITY DATE	CLAIM NO.	PERMIT NO.	CERTIFICATE NO.
---------------	-----------	------------	-----------------

NAME

ADDRESS/STREET	CITY/STATE	ZIP CODE
----------------	------------	----------

WATER RIGHT ATTRIBUTES

SOURCE

TRIBUTARY OF (IF SURFACE WATERS)

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE FEET PER YEAR
-------------------------------	----------------------------	----------------------------

QUANTITY, TYPE OF USE, PERIOD OF USE

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION--WITHDRAWAL
 feet and feet from the of Section , T. N., R. E.W.M.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE [E. or W.] W.M. E.	WRIA	COUNTY
PARCEL NUMBER	LATITUDE	LONGITUDE	DATUM		

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
-----	-------	------------------------------------

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED
 [See Attachment 2 for a map of the place of use and point(s) of diversion or withdrawal]

DESCRIPTION OF WATER SYSTEM

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE	COMPLETE PROJECT BY THIS DATE	WATER PUT TO FULL USE BY THIS DATE
----------------------------	-------------------------------	------------------------------------

PROVISIONS

Provisions related to the Trust Water Right:

Provisions related to the portion of the water right not placed into trust:

[Delete headings if there are no applicable provisions.]

FINDINGS OF FACT AND ORDER

Upon reviewing the investigator's report, I find all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, I find the change of water right as recommended will not be detrimental to existing rights or detrimental to the public interest.

Therefore, I ORDER the requested change of place and purpose of use under Trust Water Right Application No. _____, be approved/denied subject to existing rights and the provisions specified above. **[The following is optional and is only used where a physical change is part of a publicly-funded conservation project]** I further ORDER that the requested change of point of diversion/change of place of use under Water Right Change Application No.____, be approved/denied subject to existing rights and the provisions specified above.

You have the right to appeal this order to the Pollution Control Hearings Board. Pursuant to RCW 43.21B, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology, within thirty days of the date of your receipt of this document.

To appeal this order, your notice of appeal must contain a copy of the Ecology order you are appealing.

Your appeal must be mailed to:
The Pollution Control Hearings Board
PO Box 40903
Lacey WA 98504-0903

OR Hand Deliver your appeal to:
The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey WA 98503

AND

Your appeal must also be served on:
The Department of Ecology
Appeals Coordinator
PO Box 47608
Olympia WA 98504-7608

In addition, send a copy to:
_____, Section Manager
Water Resources Program
Department of Ecology

Signed at _____, Washington, this _____ day of _____ 200 _____.

_____, Section Manager
Water Resources Program
Region Office

BACKGROUND

Description and Purpose of Proposed Change

This application qualifies for expedited processing under WAC 173-152-050(3)(a) whereby water right change applications may be processed prior to applications submitted at an earlier date when the proposed water use, if approved, would substantially enhance or protect the quality of the natural environment.

Attributes of the Certificate and Proposed Change

Table 1 Summary of Existing Attributes and Proposed Changes to Water Right No.

Attributes	Documented	Proposed
Name		
Priority Date Date of Application for Change		
Instantaneous Quantity		
Annual Quantity		
Source		
Point of Diversion/Withdrawal		
Purpose of Use		
Period of Use		
Place of Use		

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in

- **Public Notice**
- **State Environmental Policy Act (SEPA)**
- **Water Resources Statutes and Case Law**

INVESTIGATION

History of Water Use

Proposed Use

Other Rights Appurtenant to the Place of Use

Hydrologic/Hydrogeologic Evaluation

Trust Water Right Calculations

Trust Water Place of Use

Trust Water Management

Impairment Considerations

Public Interest Considerations

Consideration of Protests and Comments

CONCLUSIONS

RECOMMENDATIONS (chose one)

Approval without provisions

Based on the above investigation and conclusions, I recommend that the request for change to _____ be approved in the amounts and within the limitations listed below.

Approval with provisions

Based on the above investigation and conclusions, I recommend that the request for change to _____ be approved in the amounts and within the limitations listed below and subject to the provisions listed in the Report of Examination.

Denial

Based on the above investigation and conclusions, I recommend that the request for change to _____ be denied.

Trust Water Right Attributes:

___ cfs, ___ acre-ft/yr from _____ to _____ for instream flow purposes in the primary reach.

The primary reach begins.....

___ cfs, ___ acre-ft/yr from _____ to _____ for instream flow purposes in the secondary reach as follows:

table

The secondary reach begins.....

If a portion of water right not placed into trust involves a POD or POU change:

Approval with provisions

Based on the above investigation and conclusions, I recommend that the request for change to _____ be approved in the amounts and within the limitations listed below and subject to the provisions listed in the Report of Examination.

Denial

Based on the above investigation and conclusions, I recommend that the request for change to _____ be denied.

_____ gallons per minute, _____ acre-feet per year for _____ from _____ to _____.

Point of Withdrawal:

_____ 1/4, _____ 1/4, Section _____, Township _____ North, Range _____ East W.M.

Place of Use

Report by: _____

_____ Date

Water Resources Program

Appendix H

Template for Certificate of Trust Water Right Acquisition

Certificate of Acquisition of Water Right

Certificate 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).

Appendix I
Pre-trial Order #6

AS AMENDED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF YAKIMA

IN THE MATTER OF THE DETERMINATION)
OF THE RIGHTS TO THE USE OF THE)
SURFACE WATERS OF THE YAKIMA RIVER)
DRAINAGE BASIN, IN ACCORDANCE WITH)
THE PROVISIONS OF CHAPTER 90.03,)
REVISED CODE OF WASHINGTON,)

No. 77-2-01484-5

THE STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

PRETRIAL ORDER NO. 6
Re: Procedures Relating
to Order Pendente Lite

v.

JAMES J. ACQUAVELLA, et al.,

Defendants.)

I.

BACKGROUND

A. Findings

1. During the pendency of this general adjudication case there may arise a need, from time to time, for this Court to issue interim orders relating to the use of water by one or more of the parties hereto. These interim orders pendente lite may arise in the context of, among others, regulatory action initiated by the Department of Ecology or disputes over the rights to water use between various parties.

2. The Court is also aware that there could occur drought conditions which might require a comprehensive interim regulation and administration of the waters of the Yakima River Basin for discrete

PRETRIAL ORDER NO. 6

3264 -1-

1
2
3
4
5 periods of time. This Court recognizes that there is a general policy
6 of deference, based on both Federal and Washington law, to the state
7 courts in the administration, as well as the confirmation, of water
8 rights in general adjudication cases in the posture of this case. See
9 43 U.S.C.A. §666 and Arizona v. San Carlos Apache Tribe, 463 U.S. 545
10 (1983).

11 3. Pursuant to the remand of this case to this Court by the United
12 States District Court for the Eastern District of Washington, by Order
13 dated January 12, 1979, and it being the overriding policy of this
14 Court to conduct this proceeding in a harmonious relationship with the
15 Federal Courts, this Court is willing, if it is deemed appropriate, to
16 assume the lead role in determining all of the various interim regula-
17 tory and administrative issues pertaining to surface water and its use
18 in the Yakima River Basin by the parties hereto which may arise during
19 the pendency of this case.

20 4. The lead role, described above, could not only provide an
21 orderly, unitary approach to resolving disputes among the parties,
22 thereby alleviating confusion between court systems, but could also
23 promote a policy of uniformity and continuity in interim water use
24 regulation and administration, as well as the efficient use of judicial
25 resources in both the state and federal court systems and of the
26 resources of the various parties.
27
28
29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

B. Purpose

The purpose of this order is to establish the procedures which will be followed in relation to interim water allocations among parties including the entry by this Court of any orders pendente lite.

II.

PROCEDURES - ORDERS PENDENTE LITE

Based on the foregoing, the following procedures relating to the issuance of orders pendente lite by this Court are established.

A. Procedures Relating to Non-Emergency Conditions.

The procedures set forth in II.A. relate only to conditions of a non-emergency nature. (See Section II.B. for procedures relating to emergency conditions.)

1. Any party, including the plaintiff, may request the Court to issue an order pendente lite by filing a petition, accompanied by a written certification, with the Clerk of this Court. The petition shall contain the following:

- a. Name of party;
- b. The subbasin or subbasins involved;
- c. Relief requested;
- d. A statement of reasons supporting the relief requested;
- e. The name(s) of the party or parties who are directly affected by relief requested.

1
2
3
4
5 The written certification shall contain a statement of the petitioner
6 that a copy of the petition and notice of the time and place of the
7 hearing by the Court on said petition have been transmitted through
8 the United States Postal Service by registered mail or by certified
9 mail, return receipt requested, postage prepaid to each party named in
10 Section II.A.1.e. above, and to the plaintiff. (See Section II.A.3. and
11 4. relating to hearings of petitions by this Court.)

12 2. Petitions filed under Section II.A. shall be heard on the
13 following dates:

14 a. If the petition is filed on or before the 15th day of
15 a month, the date of the hearing on the petition shall
16 be the second ~~Friday~~ ^{THURSDAY} of the next following month at
17 9:30 a.m.

18 b. If the petition is filed after the 15th day of a month,
19 the date of the hearing on the petition shall be the
20 second ~~Friday~~ ^{THURSDAY} of the second following month at 9:30 a.m.

21 3. The petitioner shall at the time of hearing be prepared to
22 submit evidence, written or oral or both, and present arguments in
23 support of its petition. Any party may, at said hearing, respond with
24 evidence and argument relevant to the petition.

25 4. The plaintiff is directed:

26 a. To include notice of all petitions filed under this
27 procedure in the monthly notice transmitted by the
28 plaintiff to all parties and attorneys of record
29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

pursuant to Pretrial Order No. 3, filed April 19, 1985;
and

- b. To be prepared to provide a response, including any recommendations it may have, at any hearing held as provided in 2, next above.

5. The Court shall, as to any petition, take such action as it deems appropriate, including the denial of the petition, or the granting of the petition with or without conditions.

B. Procedures Relating to Emergency Conditions.

1. Any party may request the Court to issue an order pendente lite relating to an emergency condition by filing a petition with the Clerk of this Court. The petition shall include the information set forth in Section II.A.1.a.-e and, in addition, shall set forth the facts constituting the emergency condition requiring the issuance of an order on an expedited basis. For purposes hereof, an emergency condition is a condition of facts that requires consideration and action by this Court in an earlier time frame than is provided by Section II.A.2.

2. Dates for hearings on petitions relating to an emergency condition shall be as follows:

- a. The petitioner shall file a motion for setting for a date for hearing with the Court. Prior to the filing thereof, the petitioner shall take all reasonable steps to notify the parties directly affected and the attorney for the plaintiff, either orally or by written communication, of the intent to file the motion.

1
2
3
4
5 b. The Court shall, upon request of the petitioner and
6 ex parte, issue such order, as it deems appropriate under the circum-
7 stances, setting a date for hearing on the motion and establishing the
8 method and content of any notice of hearing to be provided to the
9 parties.

10 c. If a petition is filed which is accompanied by supporting
11 affidavits, that in the opinion of the Court demands extraordinary
12 relief to be granted prior to a hearing as provided in Section II.B.2.b,
13 the Court shall issue orders as appropriate, for a limited term of
14 time, to take effect prior to the hearing on the petition.

15
16 III.

17 IMPACTS ON FINAL DECREE

18 Orders pendente lite and regulatory orders, as provided for herein
19 shall relate solely to the regulation or administration of the surface
20 water subject to this case pending the completion and entry of a Final
21 Decree of general adjudication of the claimed rights. In all instances
22 where an order pendente lite has been entered or a regulatory order has
23 been issued, nothing in any of said orders shall have any relationship
24 or impact on the ultimate determination as to the validity of water
25 rights in the Report of Referee, Conditional Final Order, or the Final
26 Adjudication Order. No regulatory order or order pendente lite shall
27 establish any inference or implication as to any element of a water
28 right, or be admissible as evidence in support or derogation of any
29

1
2
3
4
5 claim.

6 IV.

7 REGULATORY ORDERS OF PLAINTIFF

8 A. In addition to interim regulation of water use provided
9 herein, the plaintiff is authorized to issue regulatory orders regulat-
10 ing interim use of water by parties to this proceeding based upon:

11 (1) rights confirmed in "general adjudication" decrees entered
12 by superior courts of this state (including subsequent modifications
13 of purpose or place of use or point of diversion of such rights
14 approved by the plaintiff pursuant to RCW 90.03.380 subsequent to
15 the entry of said decrees) as to the following:

	<u>Superior Court</u>	<u>Date of Entry</u>
<u>Caption of Case</u>	<u>Cause Number</u>	<u>of Decree</u>
16 a. <u>In re Ahtanum Creek</u>	Yakima No. 18279	5/7/25
17 b. <u>In re Big Creek</u>	Kittitas No. 6759	3/27/24
18 c. <u>In re Cook Creek</u>	Kittitas No. 6222	8/13/21
19 d. <u>In re Cowiche Creek</u>	Yakima No. 14233	5/18/22
20 e. <u>In re Teanaway River</u>	Kittitas No. 6221	6/16/21
21 f. <u>In re Wenas Creek</u>	Yakima No. 12935	5/27/25;

22 or,

23 (2) rights embodied in permits or certificates established
24 under RCW 90.03.250, et seq., provided that the authority to issue
25 regulatory orders as to (2) is limited only to enforcement of
26 conditions of such certificates and permits and does not relate to
27
28
29

1
2
3
4
5 the validity of the basic right embodied in any such document; or,

6 (3) an evaluation that a use of water is not (a) embodied in
7 an aforescribed certificate or permit or (b) the subject of a
8 claim on file in the Water Rights Claims Registry of RCW 90.14.111.

9 B. (1) Any party aggrieved by a regulatory order issued by
10 plaintiff pursuant to the authority of this section may request review
11 of the order by this Court by filing a petition with this Court. The
12 petition shall set forth a synopsis of reasons for requesting the
13 review and be accompanied by a copy of the regulatory order to be
14 subjected to review. The filing of a petition shall not automatically
15 stay the effect of a regulatory order. See Section IV.B.2. All
16 petitions filed hereunder shall be heard by the Court at the times
17 provided in Section II.A.2.a. except as provided in Section IV.B.

18 (2) Any party desiring (a) to obtain an order staying the
19 effectiveness of a regulatory order prior to a hearing or (b) to
20 obtain a hearing date earlier than that provided in Section II.A.2.a.
21 may so request the Court by filing a motion with the Court with a copy
22 thereof to the plaintiff transmitted as provided in Section II.A.1.

23 The procedures of Section II.B.2.a. and b. shall be used for
24 obtaining an order setting a hearing date under this subsection. The
25 procedures of Section II.B.2.c. shall also apply in relation to any
26 requests for an order staying the effectiveness of a regulatory order
27 pending a hearing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

C. A regulatory order issued pursuant to Section IV.A. shall be subject to review by this Court through the filing of a petition requesting such review with this Court. No such petition will be considered by this Court unless it is filed within twenty (20) days after the day of receipt of the regulatory order by the petitioner; except that if the twentieth day is a Saturday, Sunday or state holiday, the last day for filing such petition shall be the next working day of the Court following the Saturday, Sunday or state holiday.

V.

NOTICE TO ALL PARTIES

Plaintiff is directed to provide immediately a copy of this order to all parties or their counsel of record, if any.

ENTERED this 18th day of February, 1987.

Walter Stauffer
JUDGE WALTER A. STAUFFER

Presented by:

Charles B. Roe, Jr.
CHARLES B. ROE, JR.
Senior Assistant Attorney General
Attorney for Plaintiff, State of
Washington, Department of Ecology

Appendix J

Pre-trial Order #12

RECEIVED

NOV 22 AM 11 25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR YAKIMA COUNTY**

IN THE MATTER OF THE
DETERMINATION OF THE RIGHTS TO
THE USE OF THE SURFACE WATERS
OF THE YAKIMA RIVER DRAINAGE
BASIN, IN ACCORDANCE WITH THE
PROVISIONS OF CHAPTER 90.03,
REVISED CODE OF WASHINGTON

STATE OF WASHINGTON DEPARTMENT
OF ECOLOGY,

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.,
Defendants.

No. 77-2-01484-5

PRETRIAL ORDER NO. 12

**RE: PROCEDURES
RELATING TO CHANGES OF
USE AND TRANSFERS OF
SURFACE WATER RIGHTS
SUBJECT TO THIS
ADJUDICATION**

I. BACKGROUND

1.1 During the pendency of this adjudication, the Court may authorize the Department of Ecology (Ecology) to regulate the use of water in the Yakima River Basin. RCW 90.03.210. On October 6, 1986, this Court entered Pretrial Order No. 5, which established procedures for interim regulation during the pendency of the adjudication. This Court ordered that, during the pendency of the adjudication and prior to judgment or appeal, surface water involved in the proceeding be regulated or partially regulated according to the schedule of rights specified in the Report of Referee for each category of claimants.

PRETRIAL ORDER NO. 12 -- 1.

1563

1 1.2 On February 18, 1987, the Court entered Pretrial Order No. 6,
2 which establishes procedures relating to interim Orders *Pendente Lite*
3 governing changes of use of water rights during the pendency of the
4 adjudication. Under Pretrial Order No. 6, an applicant to change the use of
5 a water right during the pendency of the adjudication may petition this
6 Court for an Order *Pendente Lite* authorizing the temporary change of use
7 of the water right during the pendency of the adjudication or until further
8 order of the Court.

9 1.3 On July 27, 1997, the Legislature enacted 90.80 RCW, which
10 authorizes county legislative authorities to establish water conservancy
11 boards for the purpose of making conditional decisions on water right
12 transfer applications.¹ Under this statute, water conservancy boards may
13 review water transfer applications for compliance with applicable laws and
14 regulations and issue conditional approvals of such applications, subject to
15 Ecology's final review. See RCW 90.80.070.

16 1.4 Any conditional approval of a water right transfer application
17 must be submitted by the water conservancy board to Ecology, which is
18 required to review each proposed transfer conditionally approved by the
19 board for compliance with RCW 90.03.380, 90.03.390, and 90.44.100, and
20 other applicable law. Ecology is authorized to then affirm, reverse, or
21 modify the conditional decision made by the water conservancy board. See
22 RCW 90.80.080.

23 1.5 Water conservancy boards have been established in Benton
24 County, Kittitas County, Klickitat County, and Yakima County pursuant to

25 ¹ The scope of a water conservancy board's authority is determined with reference to Ch. 90.80 RCW
26 and other applicable law.

1 90.80 RCW. Benton, Kittitas, Klickitat, and Yakima Counties encompass
2 geographic areas that are covered by this proceeding. Furthermore, water
3 conservancy boards may be established in adjacent counties, which may
4 under certain circumstances issue decisions that affect water rights that
5 also are subject to this adjudication. See RCW 90.80.070(2); ESHB 1832,
6 Ch. 237, Laws 2001 § 8. Consequently, the Court anticipates that
7 applications for the transfer of surface water right claims (based on
8 properly filed statements of claims to the Water Rights Claims Registry
9 under 90.14 RCW) and certificates and permits (under 90.03 RCW) subject
10 to this adjudication may be filed with water conservancy boards.
11 Alternatively, an applicant may apply to transfer a surface water right
12 directly with Ecology pursuant to RCW 90.03.380.

13 1.6 On May 9, 2001, Governor Locke signed Engrossed House Bill
14 1350, which established a new process for appeals of transfers of water
15 rights subject to a general adjudication. See Chapter 220, Laws 2001.
16 EHB 1350 establishes a process for appeals of decisions on changes and
17 transfers of water rights subject to a general adjudication. After enactment
18 of EHB 1350, superior court review of a decision by Ecology to change or
19 transfer a water right subject to a general adjudication will be heard by the
20 Superior Court conducting the adjudication. In the case of the Acquavella
21 adjudication, EHB 1350 also includes specific procedures under which an
22 appeal is filed directly with this Court. The statute as amended reads in
23 pertinent part as follows:

24 “(2) Any appeal of a decision of the department on an
25 application to change or transfer a water right subject to a
26 general adjudication that is being actively litigated and was
commenced before October 13, 1977, shall be conducted as
follows:

1 (a) The appeal shall be filed with the court conducting
2 the adjudication and served under RCW 34.05.542(3). The
3 content of the notice of appeal shall conform to RCW
4 34.05.546. Standing to appeal shall be based on the
5 requirements of RCW 34.05.530 and is not limited to parties to
6 the adjudication.

7 (b) If the appeal includes a challenge to the portion of the
8 department's decision that pertains to tentative determinations
9 of the validity and extent of the water right, review of those
10 tentative determinations shall be conducted by the court
11 consistent with the provisions of RCW 34.05.510 through
12 34.05.598, except that the review shall be de novo.

13 (c) If the appeal includes a challenge to any portion of the
14 department's decision other than the tentative determinations
15 of the validity and extent of the right, the court must certify to
16 the pollution control hearings board for review and decision
17 those portions of the department's decision. Review by the
18 pollution control hearings board shall be conducted consistent
19 with chapter 43.21B RCW and the board's implementing
20 regulations, except that the requirements for filing, service, and
21 content of the notice of appeal shall be governed by (a) of this
22 subsection.

23 (d) Appeals shall be scheduled to afford all parties full
24 opportunity to participate before the superior court and the
25 pollution control hearings board.

26 (e) Any person wishing to appeal the decision of the
board made under (c) of this subsection shall seek review of the
decision in accordance with chapter 34.05 RCW, except that
the petition for review must be filed with the superior court
conducting the adjudication.

(3) Nothing in this section shall be construed to affect or
modify any treaty or other federal rights of an Indian tribe, or
the rights of any federal agency or other person or entity
arising under federal law. Nothing in this section is intended
or shall be construed as affecting or modifying any existing
right of a federally recognized Indian tribe to protect from
impairment its federally reserved water rights in federal court."

1 RCW 90.03.210, as amended by Chapter 220, Laws 2001, sec. 5. The
2 statute also includes specific procedures regarding consolidation of the
3 appeal and standing. The statute reads in pertinent part as follows:

4 “(3) For proceedings conducted by the pollution control
5 hearings board pursuant to chapter 43.21B RCW or as
6 otherwise provided in RCW 28 90.03.210(2) involving decisions
7 of the department of ecology on applications for changes or
8 transfers of water rights that are the subject of a general
9 adjudication of water rights that is being litigated actively
10 under chapter 90.03 or 90.44 RCW, the petition must be filed
11 with the superior court conducting the adjudication, to be
12 consolidated by the court with the general adjudication. A
13 party to the adjudication shall be a party to the appeal under
14 this chapter only if the party files or is served with a petition for
15 review to the extent required by this chapter.”

12 RCW 34.05.514, as amended by Chapter 220, Laws 2001, sec. 3.

13 1.7 WAC 173-153-110(7), a provision in Ecology’s water
14 conservancy board rules, requires that:

15 [i]f a geographical area within the jurisdiction of a conservancy
16 board is or becomes the subject of an adjudication conducted
17 by a superior court for the determination of water rights,
18 ecology will seek guidance from the superior court regarding
19 the court’s role in administering the water rights that are
20 subject to the adjudication. Thereafter, ecology shall advise the
21 conservancy board on whether and how the board may proceed
22 to evaluate and make conditional decisions on applications for
23 transfers of water rights that are subject to the adjudication
24 being conducted by the superior court.

21 1.8 In response to Ecology’s request, this Court has decided to
22 establish rules and guidelines setting forth procedures and processes with
23 respect to applications for permanent transfers and requests for temporary
24 transfers of surface water rights subject to the adjudication, and appeals
25 from Ecology decisions on water right transfer applications.

26
PRETRIAL ORDER NO. 12 -- 5

1 3.2 An appeal of an Ecology decision on an application to transfer a
2 surface water right subject to this Order must be filed with this Court and
3 served in accordance with RCW 34.05.542(3). The "parties of record" under
4 RCW 34.05.542(3) who must be served shall be limited to the applicant of
5 the decision subject to appeal, Ecology, and the Office of the Attorney
6 General.

7 3.3 The content of the notice of appeal shall conform to RCW
8 34.05.546.

9 3.4 Standing to appeal shall be based on the requirements of RCW
10 34.05.530 and is not limited to parties to the adjudication.

11 3.5 Participation by others (both parties and non-parties to
12 Acquavella) shall be allowed for those who apply for and are allowed to
13 intervene in such appeals pursuant to the civil rules. A party to the
14 adjudication is not a party to an appeal of a decision to transfer a water
15 right unless it properly intervenes in the appeal, files a Notice of Appeal or
16 is served as one of the "parties of record" in compliance with the
17 requirements of RCW 90.03.210(2) and this Order.

18 3.6 The Referee shall ensure that the monthly notice transmitted to
19 all parties and attorneys of record includes a list of water right transfer
20 decisions by Ecology for which appeals have been filed with the Court.

21 3.7 Within 14 days of the filing of an appeal with this Court of an
22 Ecology decision to transfer a water right subject to Acquavella, any party
23 to an appeal may file with the Court and serve on all other parties to the
24 appeal a Proposed Order of Certification.

25 3.8 Within 45 days of receipt of an appeal, the Court will convene
26 the parties to the appeal in order to --

1 (a) set a schedule for the Court's review of Ecology's tentative
2 determination of the validity and extent of the water right;

3 (b) conduct a hearing, if necessary, to determine whether the
4 appeal raises issues other than Ecology's tentative determination of
5 the validity and extent of the water right;

6 (c) establish a hearing schedule including a date certain upon
7 which a decision will be made on the appeal; and

8 (d) issue an Order certifying to the PCHB such issues as may
9 be raised in the appeal other than those regarding the validity and
10 extent of the water right and are within the scope of the PCHB's
11 jurisdiction.

12 3.9 The Court shall issue an Order certifying to the PCHB such
13 issues as may be raised in the appeal other than those regarding the
14 validity and extent of the water right and are within the scope of the
15 PCHB's jurisdiction. The Court will attach a copy of the Notice of Appeal
16 and all other documents filed with the Notice of Appeal and promptly
17 forward the Order of Certification to the PCHB. The Court's Order of
18 Certification shall --

19 (a) identify the issues raised in the Notice of Appeal that must
20 be reviewed by the PCHB;

21 (b) request a ruling or decision from the PCHB by a date certain
22 on those issues that are certified to the PCHB from the Court for an
23 opinion; and
24
25
26

PRETRIAL ORDER NO. 12 -- 9

1 (c) inform the PCHB of the hearing schedule established by the
2 Court for any appeal of Ecology's tentative determination of validity
3 and extent of the water right.

4 3.10 The Court will forward to the PCHB its decision on any appeal
5 of Ecology's tentative determination of validity and extent of the water right
6 as soon as such decision is issued by the Court.

7
8 **IV. RECORD FOR APPEAL AND STANDARD OF REVIEW**

9 4.1 If the appeal includes a challenge to the portion of Ecology's
10 decision that pertains to Ecology's tentative determination of the validity
11 and extent of the water right, review of Ecology's determination shall be
12 conducted by the Court consistent with the provisions of RCW 34.05.510
13 through RCW 34.05.598, except that the review shall be *de novo*.

14 4.2 In conducting its review of an appeal of Ecology's tentative
15 determination of the validity and extent of the water right, the Court may
16 receive other evidence not contained in the agency record. Additional
17 evidence may include but is not limited to documents filed by the parties or
18 issued by the Court in this adjudication.

19 **V. POLLUTION CONTROL HEARINGS BOARD REVIEW**

20 5.1 The Order of Certification issued by the Court shall act as the
21 notice of appeal required by the PCHB.

22 5.2 Chapter 43.21B RCW and the PCHB's implementing
23 regulations will govern the PCHB's review of those issues enumerated in the
24 Court's Order of Certification, except that RCW 90.03.210(2)(a) and this
25
26

1 Order will govern the requirements for filing, service, and content of the
2 notice of appeal.

3 5.3 The Court will provide the PCHB with the Court's hearing
4 schedule for any appeal of Ecology's tentative determination of validity and
5 extent of the water right for the purposes of ensuring that the Court's
6 schedule and PCHB's schedule established under WAC 371-08-430 afford
7 all parties full opportunity to participate before the Court and the PCHB.

8 5.4 Any person wishing to appeal the PCHB's decision on an appeal
9 of Ecology's decision on a water rights transfer other than the tentative
10 determination of the validity and extent of the water right shall seek review
11 of that decision in accordance with Chapter 34.05 RCW, except that the
12 petition for judicial review must be filed with this Court.

13 5.5 The Court shall conduct its review of an appeal of the PCHB's
14 decision under Chapter 34.05 RCW.

15 5.6 The Court shall consolidate its decision on any appeal of the
16 PCHB's decision with the Court's decision on any appeal of Ecology's
17 tentative determination of validity and extent of the water right. These two
18 decisions shall be consolidated into a single cause under Civil Rule 42 and
19 any decision issued by the Court shall be issued as a single appealable
20 order.

21 VI. APPELLATE REVIEW

22 6.1 A party of record, a party who has filed a Notice of Appeal, or
23 an intervenor may appeal decisions of the Court only on those issues for
24 which a party has properly filed a Notice of Appeal with the Court upon
25 Ecology's decision or the decision of the PCHB.
26

Appendix K
Pre-trial Order #17

1 2 3 4 5 6 7 8 9 10 11	<p>RECEIVED JUN 23 2003</p> <p>IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF YAKIMA</p> <p>Department of Ecology IN THE MATTER OF THE DETERMINATION OF THE RIGHTS TO THE USE OF THE SURFACE WATERS OF THE YAKIMA RIVER DRAINAGE BASIN, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 90.03, REVISED CODE OF WASHINGTON,</p> <p>STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Plaintiff,</p> <p>vs.</p> <p>JAMES J. ACQUAVELLA, ET AL., Defendants</p>	<p>RECEIVED</p> <p>KIM M. EATON CLERK OF COURT WASHINGTON</p> <p>No. 77-2-01484-5</p>	<p>FILED JUN 20 2003</p> <p>KIM M. EATON YAKIMA COUNTY CLERK</p>
---	---	--	---

12 1. On January 22, 2002, this Court entered Pretrial Order No. 12, which establishes
13 procedures relating to changes of use and transfers of water rights subject to this adjudication.
14 Specifically, Pretrial Order No. 12 includes procedures governing appeals of decisions made by the
15 Department of Ecology relating to changes of use and transfers of water rights under RCW
16 90.03.380(1) for water rights that also are subject to this adjudication. Pretrial Order No. 12 did not
17 address the relationship of any water right change or transfer decisions, including any decisions
18 rendered after all quasi-judicial or judicial review proceedings relating to Department of Ecology
19 decisions are completed, to the entry of the final decree of this Court under RCW 90.03.230 and the
20 issuance of adjudicated certificates under RCW 90.03.240. For purposes of this Order, a "water
21 right transfer decision" is defined as an order approving a water right change or transfer made
22 pursuant to RCW 90.03.380(1) that is final after all appeals or review proceedings, if any, are
23 completed.

24 2. The purpose of this Order is to clarify the treatment by this Court of water right transfer
25 decisions made prior to the entry of a final decree by this Court as provided in RCW 90.03.230.

 3. The following procedure is established for all such water right transfer decisions:
 (a) Ecology shall, within 30 days of the date of a water right transfer decision, issue
 to the applicant a Notice of Change or Transfer for any changed or transferred water right

1 that also is subject to this adjudication. Ecology also shall file a copy of the Notice with this
2 Court. The Notice shall describe the purpose of use, place of use and point of diversion of
3 the water right, as approved for change of use or transfer. The Notice shall indicate that the
4 water right is subject to this adjudication.

5 (b) A Notice of Change or Transfer issued by Ecology pursuant to this Order shall be
6 suitable for recording, and the applicant may record the Notice with the appropriate county
7 auditor, in like manner and with the same effect as provided for in RCW 90.03.380(1). If
8 the change or transfer includes a change in place of use, the applicant shall record the Notice
9 of Change or Transfer both for the newly-authorized place of use and for the real property,
10 as described, for which use of the water right was confirmed in the applicable Conditional
11 Final Order of this Court.

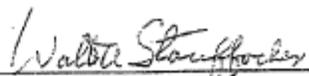
12 (c) For those changes or transfers which have been approved by Ecology prior to the
13 entry of this Order, Ecology shall be required to issue a Notice of Change or Transfer and it
14 shall be filed with the Court for incorporation by reference into the final decree.

15 (d)(i) Except as provided in subparagraph (ii), this Court shall incorporate by
16 reference in its final decree, entered in this proceeding pursuant to RCW 90.03.200, the
17 findings and conclusions contained in the Court's Conditional Final Order for each right
18 confirmed therein.

19 (ii) Unless otherwise requested by the applicant or successor-in-interest, this Court
20 shall, where a Notice of Change or Transfer has been issued by Ecology and has been filed
21 with the Court, incorporate, by reference, water right changes or transfers described in the
22 Notice into its final decree.

23 4. This Order does not apply to any treaty or other federal rights of an Indian tribe, the
24 rights of any federal agency or other person or entity arising under federal law, or water transfers
25 authorized under RCW 90.03.380(3). This Order does not affect or modify any existing right of the
United States or a federally-recognized Indian tribe to protect from impairment its federally-
reserved water rights in federal court. This Order does not address issues involving the Yakama
Reservation.

Dated this 20th day of June, 2003.


Walter A. Stauffacher, Judge

Appendix L
Motion To Be Joined

FILED

2005 JUN 13 AM 8 29

CLERK OF
SUPERIOR COURT
YAKIMA COUNTY

**STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT**

IN THE MATTER OF THE
DETERMINATION OF THE RIGHTS
TO THE USE OF THE SURFACE
WATERS OF THE YAKIMA RIVER
DRAINAGE BASIN, IN
ACCORDANCE WITH THE
PROVISIONS OF CHAPTER 90.03,
REVISED CODE OF WASHINGTON,

NO. 77-2-01484-5

MOTION TO BE JOINED AS
ADDITIONAL PARTY DEFENDANT
AND TO DIVIDE WATER RIGHT
AND AFFIDAVITS

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

COURT CLAIM NO. 01228
SUBBASIN 19

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.,

Defendants.

1. Movant Department of Ecology states that the State of Washington Trust Water Rights Program has succeeded to an interest in a portion of a water right and states the following:

- A. Claimant: Charles R. Harris and Peggy L. Harris
- B. Address: P.O. Box 723
208 Sinclair Ave.
Naches, WA 98937
- C. Telephone No.: (509) 653-2455

MOTION TO BE JOINED AS
ADDITIONAL PARTY DEFENDANT
AND TO DIVIDE WATER RIGHT AND
AFFIDAVITS

1

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

COURT CLAIM NO. 01228

18,890

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

D. Court Claim No.: 01228

II. Washington Water Trust acquired a portion of the water right from Charles R. Harris and Peggy L. Harris. Washington Water Trust states that it succeeded to all of the portion of the water right it has now transferred to the State of Washington Trust Water Rights Program.

A. Successor's Name: State of Washington Trust Water Rights Program

B. Address: Department of Ecology
Central Regional Office
15 West Yakima Avenue, Suite 200
Yakima, WA 98902-3452

C. Telephone No.: (509) 575-2490

D. Portion of water right involved:

Source: Naches River

Priority Date: May 10, 1895

Use: Instream flow

Quantity: 0.38 cfs, 112 acre-feet per year

Period of Use: April 1 through October 31

Point of Diversion: 375 feet south and 275 feet east of the west quarter corner of Section 4 being within NW ¼ SW ¼ of Section 4, T. 14 N., R. 17 E.W.M.

Place of Use: Instream flow from the historical point of diversion from the South Branch of the Naches River into La Fortune Ditch and unnamed side channels of the Naches River, to the confluence of the side channels with the mainstem Naches River, downstream to the confluence of the Yakima River with the Columbia River.

III. Claimants Charles R. Harris and Peggy L. Harris have retained a portion of the water right under Court Claim 01228 as follows:

MOTION TO BE JOINED AS
ADDITIONAL PARTY DEFENDANT
AND TO DIVIDE WATER RIGHT AND
AFFIDAVITS

2

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

COURT CLAIM NO. 01228
SUBBASIN 19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Source: Naches River
Priority Date: May 10, 1895
Use: Irrigation of 3.7 acres and stock watering.
Quantity: 0.08 cfs, 23 acre-feet per year for irrigation; .01 cfs and 1 acre-foot per year for stock water.
Period of Use: April 1 through October 31 for irrigation; year-round for stock water.
Point of Diversion: 375 feet south and 275 feet east of the west quarter corner of Section 4 being within NW ¼ SW ¼ of Section 4, T. 14 N., R. 17 E.W.M.
Place of Use: the 3.7 acres are located within Lot 13 of the Wenonah Orchard Tracts No. 2 within that portion of the E1/2NE1/4NE1/4 of Section 9, T. 14N., R. 17 E.W.M.

IV. Claimants Charles R. Harris and Peggy L. Harris consent to the addition of the State of Washington Trust Water Rights Program as a party to Court Claim No. 01228 and to division of the water right as described above. Claimants Harris sold the portion of the water right listed above to Washington Water Trust. Washington Water Trust also consents to the addition of the State of Washington Trust Water Rights Program as a party to Court Claim No. 01228 and to division of the water right as described above. Washington Water Trust retains no portion of the water right.

MOTION TO BE JOINED AS
ADDITIONAL PARTY DEFENDANT
AND TO DIVIDE WATER RIGHT AND
AFFIDAVITS

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

COURT CLAIM NO. 01228
SUBBASIN 19

1 (B) Affidavit of intermediary right holder Washington Water Trust:

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF WASHINGTON)
COUNTY OF King) ss.

I, D. Susan Adams, being first duly sworn, depose and say that I have read the above and foregoing Motion to Be Joined as Additional Party Defendant and to Divide Water Right, that I know the contents thereof, and that the facts therein stated are true.

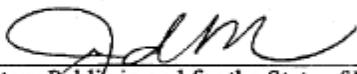
WITNESSED this 3 day of June, 2005.

WASHINGTON WATER TRUST

D. Susan Adams
Executive Director

SUBSCRIBED AND SWORN TO before me on this 3 day of June, 2005.

Notary Public
State of Washington
JENNY DEMARS
My Appointment Expires Jan 21, 2008


Notary Public in and for the State of Washington.
My appointment expires 01-21-08

MOTION TO BE JOINED AS
ADDITIONAL PARTY DEFENDANT
AND TO DIVIDE WATER RIGHT AND
AFFIDAVITS

5

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

COURT CLAIM NO. 01228
SUBBASIN 19

1 (C) Affidavit of current right holder State of Washington Trust Water Rights Program:

2 STATE OF WASHINGTON)
3 COUNTY OF Thurston) ss.

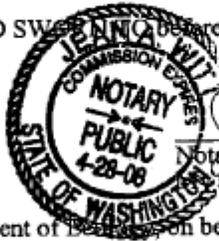
4
5 I, Ken Slattery, being first duly sworn, depose and say that I have read the above and
6 foregoing Motion to Be Joined as Additional Party Defendant and to Divide Water Right, that I
7 know the contents thereof, and that the facts therein stated are true.

8 WITNESSED this 1st day of June, 2005.

9 STATE OF WASHINGTON TRUST WATER
10 RIGHTS PROGRAM

11 Ken Slattery
12 Ken Slattery, Acting Manager
13 Water Resources Program
14 Department of Ecology

14 SUBSCRIBED AND SWORN before me on this 1st day of June, 2005.



15 Jean A. Witt
16 Notary Public in and for the State of Washington.
17 Appointment expires 04-28-08

18 VI. The Department of Ecology on behalf of the State of Washington Water Trust
19 Program, respectfully moves this Court for an Order to Join Additional Party and to Divide
20 Water Right as attached hereto.

21 DATED this 31st day of May, 2005.

22 Barbara A. Markham
23 BARBARA A. MARKHAM, WSBA # 30234
24 Assistant Attorney General
25 Attorney for Washington Department of Ecology

26 MOTION TO BE JOINED AS
ADDITIONAL PARTY DEFENDANT
AND TO DIVIDE WATER RIGHT AND
AFFIDAVITS

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

COURT CLAIM NO. 01228
SUBBASIN 19

Appendix M

Order To Join

FILED

2015 JUN 10 AM 9 27

YAKIMA COUNTY SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

IN THE MATTER OF THE
DETERMINATION OF THE RIGHTS
TO THE USE OF THE SURFACE
WATERS OF THE YAKIMA RIVER
DRAINAGE BASIN, IN
ACCORDANCE WITH THE
PROVISIONS OF CHAPTER 90.03,
REVISED CODE OF WASHINGTON,

NO. 77-2-01484-5

~~[PROPOSED]~~
ORDER TO JOIN ADDITIONAL
PARTY AND DIVIDE WATER
RIGHT

WOS

COURT CLAIM NO. 01228
SUBBASIN 19

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

JAMES J. ACQUAVELLA, et al.,

Defendants.

This matter came before the Court on motion of Washington Department of Ecology. The Court, having considered the motion and the basis therefore, finds that Claimants Charles R. Harris and Peggy L. Harris have transferred a portion of the water right under the above court claim, and ORDERS as follows:

The State of Washington Trust Water Rights Program is joined as an additional party to Court Claim 01228. The water right in Court Claim 01228 is divided as set forth below.

[PROPOSED]
ORDER TO JOIN ADDITIONAL PARTY
AND DIVIDE WATER RIGHT

COURT CLAIM NO. 01228
SUBBASIN 19

18,891

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

1 At the completion of the adjudication, the Department of Ecology shall issue
2 certificates regarding Court Claim 01228 as follows:

3 To Charles R. Harris and Peggy L. Harris:

4 Source: Naches River

5 Use: Irrigation of 3.7 acres and stock watering.

6 Quantity: 0.08 cfs, 23 acre-feet per year for irrigation; .01 cfs and 1 acre-foot
7 per year for stock water.

8 Period of Use: April 1 through October 31 for irrigation; year-round for stock
9 water.

10 Priority Date: May 10, 1895

11 Point of Diversion: 375 feet south and 275 feet east of the west quarter corner
12 of Section 4 being within NW ¼ SW ¼ of Section 4, T. 14 N., R. 17 E.W.M.

13 Place of Use: the 3.7 acres are located within Lot 13 of the Wenonah Orchard
14 Tracts No. 2 within that portion of the E1/2NE1/4NE1/4 of Section 9, T. 14N,
15 R. 17 E.W.M.

16 To State of Washington Trust Water Rights Program:

17 Source: Naches River

18 Use: Instream flow Quantity: 0.38 cfs, 112 acre-feet per year.

19 Period of Use: April 1 through October 31.

20 Priority Date: May 10, 1895

21 Point of Diversion: 375 feet south and 275 feet east of the west quarter corner
22 of Section 4 being within NW ¼ SW ¼ of Section 4, T. 14 N., R. 17 E.W.M.

23 Place of Use: Instream flow from the historical point of diversion from the
24 South Branch of the Naches River into La Fortune Ditch and unnamed side
25 channels of the Naches River, to the confluence of the side channels with the
26

[PROPOSED]
ORDER TO JOIN ADDITIONAL PARTY
AND DIVIDE WATER RIGHT

COURT CLAIM NO. 01228
SUBBASIN 19

2

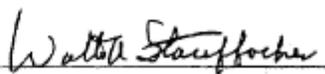
ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

mainstem Naches River, downstream to the confluence of the Yakima River
with the Columbia River.

This order shall be effective upon filing with the Clerk. Any objection to the order
must be filed with the Clerk within 30 days of its publication in the Monthly Notice or shall be
deemed waived.

DATED this 10th day of June, 2005.



Judge Walter A. Stauffacher

Presented by:
ROB McKENNA
ATTORNEY GENERAL



BARBARA A. MARKHAM, WSBA #30234
Assistant Attorney General
Attorney for Washington Department of Ecology

[PROPOSED]
ORDER TO JOIN ADDITIONAL PARTY
AND DIVIDE WATER RIGHT

COURT CLAIM NO. 01228
SUBBASIN 19

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 586-6760

Appendix N
Quit Claim

RECORDED AT THE REQUEST OF:
AND AFTER RECORDING RETURN TO:

D. Susan Adams
Executive Director
Washington Water Trust
810 Third Avenue, Suite 180
Seattle, WA 98104



Document Title: Water Right Conveyance and Assignment

Grantors: Washington Water Trust

Grantee: The State of Washington, by and through its Department of Ecology

Legal Description: Water right formerly appurtenant to portions of Lots 13, 14, 15, 16, 18, 19, 20 and 21, Wenohah Orchards & development Co., Inc., all Lying within Yakima County, Washington (The full legal description appears in Exhibit B of this document.)

Assessor's Tax
Parcel No: 171409-11402, 11411, 12412 and 11404

Reference Numbers
Of Documents
Assigned
Or Released: 7419255

[Note: This page is a cover sheet, attached pursuant to RCW 65.04.047, and is not a substantive portion of the instrument recorded herewith.]



7449515
Page: 1 of 8
04/13/2005 11:48A
Yakima Co, WA

WATER RIGHT CONVEYANCE AND ASSIGNMENT

The Washington Water Trust ("WWT") gifts and hereby quit claims, conveys and assigns to the State of Washington, by and through its Department of Ecology, a water right to 112 acre-feet per year of water under Court Claim No. 01228 within Subbasin No. 19 in the Yakima River Basin Water Rights Adjudication, *State of Washington v. James J. Acquavella, et al.*, (Yakima Superior Court Cause No. 7-2-01484-5)(the "Water Right"), together with any after-acquired title to that water right to 112 acre-feet of water. The Water Right was confirmed by the Court in the Conditional Final Order for Subbasin No. 19 entered December 14, 1995, and is more particularly described in the Report of Examination issued by the State of Washington, Department of Ecology, dated August 17, 2004. A copy of the Report of Examination is attached as Exhibit A to this Water Right Conveyance.

The Water Right was formerly appurtenant to the real property described in Exhibit B to this Conveyance (the "Property"), but was severed from ownership of the Property when the Water Right was conveyed to WWT by Water Right Conveyance dated September 3, 2004 and recorded on September 13, 2004 in the records of Yakima County, Auditor's File No. 7419255.

WWT conveys and assigns the Water Right to the State of Washington in perpetuity to be administered and managed by the Department of Ecology as a trust water right under the Trust Water Right Program established in Chapter 90.42 RCW. Pursuant to RCW 90.42.080(1)(a)(b) and (7), the Water Right is to be used exclusively to enhance instream flows within the Naches and Yakima basins downstream to the confluence with the Columbia River for the preservation of wildlife, fish, scenic, recreational, aesthetic, and other environmental values.

DATED this 30th day of March, 2005

GRANTOR:

WASHINGTON WATER TRUST.
A Washington nonprofit corporation

By: 
Susan Adams, Its Executive Director

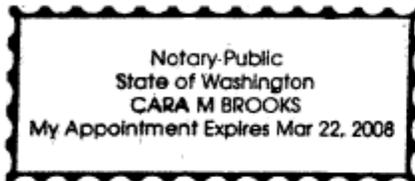


7449515
Page: 2 of 8
04/13/2005 11:48A
Yakima Co, WA

STATE OF WASHINGTON)
)ss.
COUNTY OF King)

I certify that on this 30th day of March, 2005, that I know or have satisfactory evidence that SUSAN ADAMS is the person who appeared before me, and said person acknowledged that he is the individual described in and who executed the foregoing instrument, and acknowledged that he signed same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 30th day of March, 2005.



Cara M. Brooks
Cara M. Brooks
(Printed Name)
Notary Public in and for the
State of Washington
Residing at 201 3rd Ave Seattle
Commission Expires: 03/22/2008



7449515
Page: 3 of 8
04/13/2005 11:48A
Yakima Co, WA



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490



March 15, 2005

D. Susan Adams
Executive Director
Washington Water Trust
810 Third Avenue, Suite 180
Seattle, Washington 98104-1606

RE: Court Claim No. 01228, Subbasin No. 19 (Lower Naches),
Charles & Peggy Harris

Ecology indicates agreement to the terms of WWT's donation by returning the requested signed letter.

Within the next 90 days, my office will be working with the Attorney General's office to complete the motion process with the Superior Court which will partition the water right and add a party to Court Claim No. 01228.

Sincerely,

Bob Barwin, Section Manager
Water Resources
Department of Ecology
Central Regional Office

RB:hd
050316

Enclosure: March 3, 2005 Letter From D. Susan Adams, Executive Director, WWT



March 3, 2005



Robert Barwin
Department of Ecology
Central Regional Office
15 West Yakima Avenue, Suite 200
Yakima, WA 98902-3452

The Washington Water Trust is a private, nonprofit organization that works to benefit water quality, fisheries and recreation in Washington's rivers and streams by acquiring existing water right from willing sellers through purchase, lease or gift.

Re: Washington Water Trust Donation of Water Right to State Trust Water Rights Program (Report of Examination for Change CS4-01228CTCL)

Dear Mr. Barwin:

Enclosed with this letter is a Water Right Conveyance by which the Washington Water Trust ("WWT") intends to donate and quitclaim a water right to the State of Washington Trust Water Rights Program. The water right is a portion of the right confirmed to Charles and Peggy Harris in *State of Washington v. James J. Acquavella, et al.*, (Yakima Superior Court Cause No. 7-2-01484-5) under Court Claim No. 01228 by the Conditional Final Order in Subbasin No. 19 entered December 14, 1995. Ecology approved a change of 112 acre-feet of the water right to instream flow in the Amended Report of Examination dated August 27, 2004, which is Exhibit A to the Water Right Conveyance.

The water right for instream flow was formerly appurtenant to 26.3 acres, which have been purchased by the Yakama Indian Nation ("YIN"). The water is to be used for fish and wildlife enhancement in the side channels of the Naches River that flow through the property purchased by YIN, which is identified in Exhibit B to the Water Right Conveyance. By the terms of the Water Right Conveyance, WWT expressly limits the use of the water right for instream flow purposes in the Naches and Yakima basins. Consistent with the terms of the Report of Examination, the consumptive portion of the right is to be protected downstream to the confluence of the Yakima River with the Columbia River.

Since our November 2004 letter to you regarding this matter, Assistant Attorney General Barbara Markham has reviewed the quit claim deed and provided suggested changes. We agree with Ms. Markham's suggestions and have incorporated all of the changes in the final deed.

810 Third Avenue, Suite 120 Seattle, WA 98104 ~ tel: (206) 675-1585 fax: (206) 749-9274
www.thewatertrust.org ~ info@thewatertrust.org

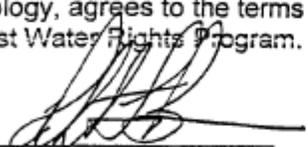
In donating the water right to the State of Washington, WWT requests that the State file a motion with the Yakima Superior Court in the Yakima Adjudication and request an order partitioning the water right between the Harris's and the State, and adding the State as an additional party under Court Claim No. 01228. Such order is necessary to ensure an accurate certificate of adjudicated water right is entered at the close of the adjudication.

If Ecology agrees to the terms of WWT's donation and agrees to file the motion with the adjudication court to partition the water right and add a party to Court Claim No. 01228 within 90 days of receipt of the recorded deed, please sign below and return this letter to WWT. Once we receive Ecology's agreement, we will sign the Water Right Conveyance, record it with Yakima County, and provide a copy to you. We request that you provide us with a copy of Ecology's motion to the court and the order entered by the court. If you have any questions regarding this water right donation, please call Lisa Pelly at WWT at (206) 675-1585, ext. 104.



D. Susan Adams
Executive Director
Washington Water Trust
810 Third Avenue, Suite 180
Seattle, WA 98104

The undersigned, on behalf of the State of Washington Department of Ecology, agrees to the terms of WWT's donation of water right to the state Trust Water Rights Program.

By: 
Robert F. Barwin, Section Manager
Water Resources Program
Department of Ecology
Central Regional Office

Date: MAR 15 2005

Cc: Barbara Markham, AAG Ecology

Levying Civil Penalties

Contact: Policy and Planning Section Effective Date: 5/13/2009

Purpose: To provide guidance to Water Resources Program staff on the compliance and enforcement process, and to provide for the consistent levying of penalties.

Application: This guidance applies to the issuance of all penalties except those that are related to well construction violations under RCW 18.104.155.

Background:

Civil penalties are enforcement tools that provide an economic motivation to change behavior and ensure compliance with the law. Civil penalties are not issued to punish the violator, but to correct environmental regulatory violations and deter future violations.

The Water Resource Program's authority to levy penalties is found in the following statutes:

- Water Code (1917) Chapter 90.03 RCW;
- Floodplain Management (1935) Chapter 86.16 RCW;
- Regulation of Public Ground Waters (1945) Chapter 90.44 RCW;
- Department of Ecology (1970) Chapter 43.21A RCW;
- Water Resources Act of 1971 Chapter 90.54 RCW;
- Water Well Construction Act (1971) Chapter 18.104 RCW.

The Water Resources Program may levy civil penalties ranging from \$100 to \$5,000 per day per violation of any provision of chapters 43.83B, 90.03, 90.22, and 90.44 RCW. The program may also levy a civil penalty for violations of rules, regulatory orders, permits, and similar documents adopted or issued under these chapters.

This guidance is intended to guide Water Resources Program staff, and facilitate consistency among staff in levying civil penalties. Further, this guidance explains the programs interpretation of the applicable laws and regulations. This document provides guidance to staff but does not prescribe specific monetary penalty amounts in specific cases. When determining the range of a civil penalty in a specific case, Water Resources Program staff have discretion to set a penalty amount based on the results of their investigation.

Compliance/Enforcement Process

The Water Resources Program strives to gain voluntary compliance with state water law. This is done by providing technical assistance through a network of compliance and enforcement staff including water masters, stream patrollers, and other assigned staff. When voluntary compliance is not obtained, a sequence of increasingly stringent actions is used to take consistent, fair, and

assertive enforcement actions. These actions can end in a Penalty Order, or in rare cases, a criminal violation. We choose and conduct compliance and enforcement actions keeping in mind these goals and objectives.

The enforcement tools available to Water Resources Program compliance and enforcement staff include both informal and formal options.

Informal options

- Verbal or Written Warnings: A verbal warning or warning letter may be issued when Ecology has received a complaint and a preliminary investigation shows a potential or actual violation. Verbal warnings and warning letters are not appealable actions. They are appropriate for less serious violations, or to request actions to prevent violations before they occur (RCW 90.03.605(1)(b)).
- Notice of Correction: Staff may recommend issuance of a Notice of Correction when they have observed and documented a violation during an inspection or investigation, but not during a technical assistance visit. It is an informal enforcement action and is not appealable (RCW 43.05.060).

Formal options

- Notice of Violation: A Notice of Violation informs the responsible party of a violation of law or agency rule, and what they must do, by a specific date, to achieve compliance. A Notice of Violation is a formal enforcement action and is an appealable action, requires a docket number, and is issued by certified mail or delivered in-person¹.
- Administrative Order: An Order is a formal requirement to correct or prevent a documented violation. An Administrative Order is an appealable action, requires a docket number, and is issued by certified mail or delivered in-person¹.
- Notice of Penalty: A Notice of Penalty is a formal enforcement action that issues a financial penalty. It is an appealable action, requires a docket number, and is issued by certified mail or delivered in-person¹.
- Criminal Violation: A criminal violation is any crime against the Water Code. Unauthorized use of water, interference with works, wrongful use of water, property destruction, or obstruction of right of way are all considered criminal misdemeanors (RCW 90.03.400 through 90.03.420).

Nothing in this guidance is intended to prevent the programs compliance and enforcement staff from taking immediate action to cause a violation to be ceased immediately if, in their opinion,

¹ Other delivery methods may be used for persons outside the United States or if these attempts fail to deliver the mailing.

the nature of the violation is causing harm to other water rights or to public resources (RCW 90.03.605(2)).

Consistent Penalties

After the program has decided to issue a penalty, the amount is calculated using a penalty matrix (attachment 1). The matrix is not intended to determine if a penalty is appropriate, but rather it enables the program to be consistent in the penalty amounts levied.

Penalties are set by RCW 90.03.600 from a minimum of \$100 to a maximum of \$5,000 per day, per violation. The penalty matrix will be used to determine the amount to levy for each violation amount, up to the statutory maximum. Each violation is a separate and distinct offense. For continuing violations, every day the violation continues constitutes a separate and distinct violation.

Pursuant to RCW 90.03.600, the procedures outlined in RCW 90.48.144 apply to all phases of levying a penalty and reviewing and appealing a Penalty Order. In determining the amount of a penalty, staff considers:

- The seriousness of the violation.
- Whether the violation is repeated or continuous after a verbal or written warning has been provided.
- Whether damage has occurred to the health or property of others.

Damage to the health of the environment, and whether the violator gained an economic benefit through the violation, are also factors that may be considered when calculating penalties.

The penalty matrix uses a series of questions designed to help determine the amount of a civil penalty, including considerations of:

Prior behavior of the violator

Consideration of the violator's prior behavior includes taking into account whether the violation is repeated or continuous after the violator(s) were aware of the violation, steps taken to comply, and opportunities the violator had to correct the violations.

Specific criteria include:

- Record of similar violations or a pattern of violations indicating general disregard of environmental laws and rules.
- Precautions taken to prevent the violation.

Remedial actions taken by the violator to correct the problem

Includes the degree the responsible party cooperated with Ecology to gain compliance, and how timely and appropriately corrective actions were taken.

Damage to the health or property of others, or to the environment

Involves the gravity of the damage to the environment, human health, or the property of others, and the circumstances of its occurrence. Environmental effects include, but are not limited to, waste of water, theft of water, lowered water tables, impaired streamflows, and impairment of senior water rights.

Specific criteria include:

- Whether the damage was due to negligence, recklessness, or was intentional.
- The duration and number of specific violations.
- Whether the responsible party gained an economic benefit through the violation.

Magnifying factors

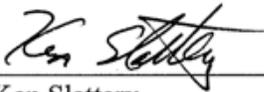
- If the violator has a history of repeat or continuous violations of the same nature, the minimum amount of the penalty is \$1000.
- If the violator has a history of previous penalties, multiply the previous penalty by three, up to a maximum of \$5,000, for each violation.
- For a continuing violation multiply the penalty amount by the number of days the violation continues.

Mitigative Factors

Penalties may be reduced upon consideration of certain mitigative factors. Any reduction of a penalty is at the discretion of the programs compliance and enforcement staff.

Tracking Penalty Orders

All penalty orders require a docket number, and must be entered into the Agency's Docket Management System with the appropriate data and narrative. All penalty orders and associated correspondence must be copied to the Fiscal Office Penalty Desk.



Ken Slattery
Program Manager
Water Resources Program

Special Note: These policies, procedures, and guidance documents are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.

Attachment 1

Penalty Matrix				
	No	Possibly	Probably	Definitely
1. Willful or knowing violation?	0	1	2	3
<p>"No" if the violator obviously did not know that the action or inaction constituted a violation. "Possibly" if the violator should have known. "Probably" if it is likely the violator knew. "Definitely" if the violator clearly knew. (If the answer is "definitely," consider consulting with the environmental crimes unit.)</p> <p>Mitigative Factor - Degree of cooperation in working toward compliance.</p>				
2. Failure to obtain necessary permits?	0			3
<p>"No" if the paperwork was complete and appropriate for the action that caused the violation. "Definitely" if missing any of the required permits and approvals for the action that caused the violation.</p>				
3. Economic benefit?	0	1	2	3
<p>Did non-compliance benefit anyone economically? Avoided costs may include engineering costs, permit fees, or product sales. "No" if it is clear that no one obtained an economic benefit. "Possibly" if someone might have benefited. "Probably" if anyone benefited, but the benefit is not quantifiable. "Definitely" if the economic benefit is quantifiable.</p>				
4. Environmental or resource damage?	0	1	2	3
<p>"No" if there is no evidence to support a claim of environmental damage or impairment of beneficial uses. "Possibly" if environmental damage or impairment of beneficial uses can be inferred from evidence or knowledge of the effects of the violation. "Probably" if there is evidence to support a claim of environmental damage or impairment of beneficial uses and there is a plausible connection between the violation and the damage or impairment. "Definitely" if there is direct evidence linking demonstrable environmental damage or impairment of the beneficial uses with the violation.</p> <p>Mitigative Factor - Compensation paid or agreed to for damages to public resources.</p>				

5. Damage to the property of others?	0	1	2	3
<p>"No" if there is no evidence to support a claim of property damage or impairment of beneficial uses.</p> <p>"Possibly" if property damage or impairment of beneficial uses can be inferred from evidence or knowledge of the effects of the violation.</p> <p>"Probably" if there is evidence to support a claim of property damage or impairment of beneficial uses and there is a plausible connection between the violation and the damage/impairment.</p> <p>"Definitely" if there is direct evidence linking demonstrable property damage or impairment of the beneficial uses with the violation.</p> <p>Mitigative Factor - Compensation paid or agreed to for damages to public resources.</p>				
6. Damage to the health of others?	0	1	2	3
<p>"No" if there is no evidence to support a claim of damage to health.</p> <p>"Possibly" if damage to health can be inferred from evidence and knowledge of the effects of the violation.</p> <p>"Probably" if evidence supports a claim of damage to health and there is a plausible connection between this violation and the effect on health .</p> <p>"Definitely" if there is direct evidence linking damage to health or adverse effects with the violation.</p>				
7. Unresponsive in correcting the violation?	0	1	2	3
<p>"No" if the violation was corrected as soon as the responsible person learned of it.</p> <p>"Possibly" if the violation was corrected in a less timely and cooperative fashion.</p> <p>"Probably" if the responsible party attempted to correct the problem but did not correct it.</p> <p>"Definitely" if the responsible party made no attempt to correct the violation.</p> <p>Mitigative Factors - Timeliness and appropriateness of corrective actions taken. Degree of cooperation in working toward compliance.</p>				
Total				

Rating	1	2-5	6-10	11-15	16-20	21
Penalty/day	\$100	\$500	\$1,000	\$2,000	\$4,000	\$5,000

GUIDANCE FOR AMENDING WATER RIGHT CLAIMS

Contact: Policy and Planning Section Effective Date: April 15, 2008

Reference: [Chapter 90.14 RCW](#)

Purpose: Provide clear and consistent guidance about processing requests for water right claim amendments.

The purpose of a claim amendment is to clarify the statements and descriptions, provided on the original claim form, consistent with the intent of the original claimant. The amendment process is not a means to change or transfer an aspect of the water right claim, or to otherwise modify or enlarge the claim.

Adjudication is the only method to determine the extent and validity of a water right asserted by a water right claim. The water right confirmed through adjudication may vary from the statements provided on the water right claim.

Application: This guidance applies to all requests received under RCW 90.14.065 for amendments to water right claims.

Case law: Knight et al v. Ecology & RD Merrill Co
Packwood Canal v. Ecology (partially overruled)
Willowbrook Farms, LLP v. Ecology
Papineau v. Ecology (partially overruled)
Moeur v. Ecology
McMeans v. Ecology
Sweet Grass Investments LLC v. Ecology

Definitions:

Ministerial error:

- A typographical or clerical error that occurred in the act of filling out the original claim form. These types of amendments are ministerial because they correct errors that are obvious, based solely on review of the claim form itself.
- A change to an item of information on the original claim form that conflicts with the other information on the form, and by amending that item will eliminate that inconsistency. Such an amendment is allowed only if the amendment is not changing or transferring an aspect of the water right or the amendment does not involve an actual expansion of the quantity of water used or of acres irrigated.

Unforeseen circumstances: A change in circumstances not foreseeable at the time the original claim was filed. The change in circumstances must relate only to the manner of transportation or diversion of the water, and not to the use or quantity of the water.

Background

The Washington Department of Ecology (Ecology) is responsible for the Water Rights Claims Registry (Registry) and amendments to water right claims within the Registry, administered under Chapter 90.14 RCW. [RCW 90.14.065](#) states that any person or entity, or their successor, who has a statement of claim on file with the Water Rights Claims Registry on April 20, 1987, may request an amendment. The request must be based on:

1. An error in estimating the quantity of the water claimed as described in [RCW 90.14.051](#). The claim amendment applicant must provide reasons for the error in the original claim.
2. A change in circumstances not anticipated when the original claim was filed, as long as it relates only to the manner of transportation or diversion of the water and not to the use or quantity of the water.
3. An amendment that is ministerial in nature. The claim amendment applicant must show that the information provided on the claim form was contrary to the intent of the claimant.

If the requested amendment meets any of the three criteria, Ecology's Water Resources Program must accept the request and file the amendment in the Registry. If the program concludes that the amendment does not meet subsections (1), (2), or (3) of RCW 90.14.065, they issue the determination through an Administrative Order and reject the request.

Filing Amendments

Any person or entity, or their successor, with a water right claim on file by April 20, 1987, may submit an amendment to their claim. Ecology is not authorized to amend claims filed after April 20, 1987.

Applicants should submit requests on the Amended Claim for Water Right form, [ECY 040-6](#). Ecology may also accept the request as long as the applicant provides a copy of the original claim and the following information:

1. Applicant name, address, zip code, and phone number.
2. Original claimants name and address.
3. Reason for the amendment to the claim form.
4. Whether the claim is for surface water or groundwater, and the name of the source if known.

5. Quantities of water and times of use claimed, including:
 - a) Cubic feet per second or gallons per minute.
 - b) Acre-feet per year.
 - c) Acres currently irrigated (if irrigation is claimed) and times during the year when water is used.
6. Date when water was first put to beneficial use.
7. Location of point(s) of diversion or withdrawal (north – south and east – west distances from nearest section corner, ¼ ¼ section, section, township, range, or Lot and Block and name of plat or addition).
8. Legal description of property where water is used (metes and bounds property description, ¼ ¼ section, section, township, and range, or Lot and Block and name of plat or addition, as known).
9. Purpose(s) of use.
10. Legal doctrine on which the claim is based (riparian or prior appropriation).

The applicant must sign and date the request and submit it with a \$50 filing fee to:

Department of Ecology
Cashiering Unit
PO Box 47611
Olympia WA 98504-7611

The cashiering unit forwards the request to the Water Resources Program's Policy and Planning Section. The Policy and Planning Section notifies the appropriate regional office of the request, identifying who is conducting the review and sharing information and documents as requested.

Evaluation

Ecology evaluates each amendment request in respect to the three conditions in RCW 90.14.065. Legislation requires Ecology to approve the amendment unless, in a written declaration, Ecology finds the request fails to meet any of the following conditions:

Error in estimation

The original estimate of the instantaneous or annual quantity did not accurately reflect actual water use.

Change in circumstances

There has been a change in circumstances not foreseeable when the original claim was filed. This change in circumstances may relate only to the manner of transportation or diversion of the water, and not to the use, quantity, or source of the water. Ecology will review the change of circumstance, but will not quantify the amount of water claimed.

Ministerial Error

The original claim form contained a typographical or clerical mistake and the requested amendment is consistent with the original claimant's intent. Ministerial errors can also consist of amending an item on the claim or clarifying information that conflicts or is contrary to the original claimant's intent.

- The purpose or place of use, or the point of diversion or withdrawal may be amended if the amendment corrects a ministerial error.
- The amendment cannot change or transfer an aspect of the claimed water right, or increase the quantity of water used or the acres irrigated.

If the requested amendment does not correct an error in estimation or a ministerial error, or requests a change in circumstances other than to the manner of transportation or diversion, Ecology notifies the applicant that they must request a change through [RCW 90.03.380](#) or [RCW 90.44.100](#). We will also provide information on filing an Application for Change/Transfer of a Water Right.

Process

Ecology documents the evaluation of each amendment request through an Administrative Order. The evaluation includes background information, evaluation of the proposed amendment, and details of the approval or rejection of the amendment. The Order must include a docket number whether the amendment was approved or rejected.

Amendment Decision

Once complete, the Water Resources Program Manager signs the Order and cover letter. The documents are then sent to the applicant by certified mail, together with information on how to file an appeal of the decision.

If the amendment is approved, the applicant should be informed that acceptance of the amendment does not constitute an adjudication of the water right claim.

Processing Documentation

The Policy and Planning Section will coordinate record keeping of the request and decision. To ensure we have properly documented the decision:

- The entire claim record is scanned and sent to the appropriate regional office. This information is entered into the Water Right Tracking System (WRTS).
- The paper files are microfilmed and stored in Central Records.

Appeals

The Administrative Order is an appealable action. Applicants may appeal the Order to the Washington State [Pollution Control Hearings Board](#) (PCHB). To appeal, the applicant must file their appeal with the PCHB and serve notice to Ecology within 30 days after receipt of the Order.

The Water Resources Program, Policy and Planning Section, represented by the Attorney General's Office, will defend the decision.

Guidance for Amending Water Right Claims

For reference, this guidance generally follows the format of the Water Right Claim Long Form.

1. Name: Any water rights preserved under a registered water right claim are appurtenant (attached) to the lands claimed as the place of use. The original name on the water right claim can be amended only if it is a correction of a ministerial error.

Address: The address on the claim form is the place of residence of the original claimant and is not relevant to the nature of the water right claim. The original address on the water right claim can be amended only if it is a correction of a ministerial error.

2. Source from which the right to take and make use of water is claimed: The source description can be amended through the "ministerial" provision of the statute under either of the following circumstances:

- The name of the source has changed since the original claim was filed. Documentation should accompany the request.
- The source is known by more than one name (for example "also known as . . ."). Documentation should accompany the request.

The applicant must clearly show that the original point of diversion has not changed since the original claim form was filed. (See #5, below.)

- 3A. Quantity of water claimed: An amendment to the instantaneous quantity is allowed by [RCW 90.14.065](#)(1), which states that an amendment can be sought if there was "An error in estimation of the quantity of the applicant's water claim . . . if the applicant provides reasons for the failure to claim such a right in the original claim."

Presently used: "Presently used" refers to the instantaneous quantity of water in use at the time the original claim form was filed, and can be changed by a claim amendment only if it corrects a ministerial error.

- 3B. Annual quantity claimed: [RCW 90.14.065](#)(1) allows an amendment to annual quantity when there was an "error in estimation of the quantity of the applicant's water claim . . . if the applicant provides reasons for the failure to claim such a right in the original claim."

Presently used: "Presently used" refers to the annual quantity of water used at the time the original claim was made. It can be changed by a claim amendment only if it corrects a ministerial error.

- 3C. If for irrigation, acres claimed: The number of acres claimed can be changed by a claim amendment only if it is a correction of a ministerial error. A claim amendment may only

change the number of acres claimed if it does not increase the quantity of water used or acres irrigated.

Presently irrigated: "Presently irrigated" refers to the acreage irrigated at the time the original claim was made. It can be amended only if it corrects a ministerial error.

- 3D. Time(s) during each year when water is used: The time or period of use can be amended only if it corrects a ministerial error.
4. Date of first putting water to use: This date can be amended only if it corrects a ministerial error.
5. Location of the point(s) of diversion/withdrawal: The description of the location can only be changed through a claim amendment if it corrects a ministerial error.

The location of the point(s) of diversion/withdrawal may be changed to a new location under [RCW 90.03.380](#), [90.03.390](#), [90.03.395](#), [90.03.397](#), [90.44.100](#), and [90.44.105](#).

6. Legal description of lands on which the water is used: A claim amendment may only change this information if it corrects a ministerial error.

The amendment cannot involve an expansion of the quantity of the water used or the acres irrigated, or any other aspect of the original water right claim.

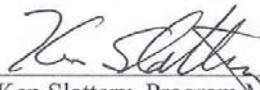
The place of use may be changed through the provisions of [RCW 90.03.380](#), [90.03.390](#), and [90.44.100](#).

7. Purposes for which water is used: A claim amendment may only change the description of the purpose of use if it corrects a ministerial error.

The amendment cannot increase the quantity of water used or acres irrigated, or any other aspect of the original water right claimed.

The actual purpose of use may be changed through the provisions of [RCW 90.03.380](#), [90.03.390](#), and [90.44.100](#).

8. The legal doctrine(s) upon which the right of claim is based: Legal doctrine is a fundamental component of a water right. It can be changed by a claim amendment only if it corrects a ministerial error.



Ken Slattery, Program Manager

4/15/2008
Date

ENSURING PROPER SIGNATURE ON APPLICATIONS AND FORMS

Contact: Policy and Planning Section Effective Date: 08/10/2009

References: RCW 90.03.260, RCW 90.03.270, RCW 90.03.380, RCW 90.03.390, RCW 90.44.060, RCW 90.44.100, RCW 90.44.105, RCW 90.44.460, WAC 508-12-100, WAC 508-12-130, WAC 308-56A-270

Purpose: To provide guidance to water resources staff when reviewing water right applications, change applications, and other forms and documents for acceptance.

Application: This guidance applies to any application, form or other document that must be signed to be accepted.

This guidance supersedes any previous Guidance, Policy, Interpretive Statement, Focus Sheet or other stated Ecology viewpoint with which it may conflict.

Background and Evaluation

Any application or form that requires a signature must be signed to be accepted. An unsigned application or form is considered defective and must be returned for correction or completion. An application or form without appropriate signatures cannot be processed.

A signature is the name of a person written with his or her own hand, or a hand written mark or sign intended to authenticate any instrument or writing. The following handwritten marks are acceptable as signatures:

- The name in the same form as it appears on the application or on the certificate of ownership.
- Initials corresponding to the first letters of the given name(s) and last name.
- A given name(s) corresponding to the initials.
- Common nicknames such as Bob for Robert, Jim for James, Betty for Elizabeth, etc.
- A signature, memorandum, signature stamp, mark or sign intended to authenticate an application or form

Signing an application or form makes it valid, identifies the applicant, shows informed consent, and constitutes approval, acceptance or obligation by the person(s) who signs it. Witnessing a signature by a notary public attests that the signature is authentic.

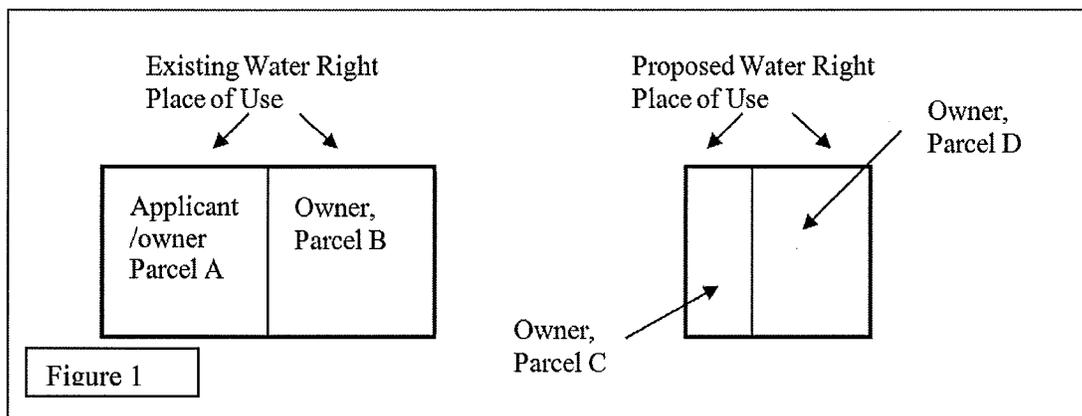
Washington State is a ‘community property’ state, and as such, all real and personal property is equally owned in undivided one-half interests by a husband and wife by reason of their marital status. Water right applications, permits and certificates may be held as community property by

spouses. Spouses should sign and date any application, assignment, or form that pertains to water rights, permits, changes or certificates. However, if only one spouse signs the document, that person binds the community unless another exemption applies.

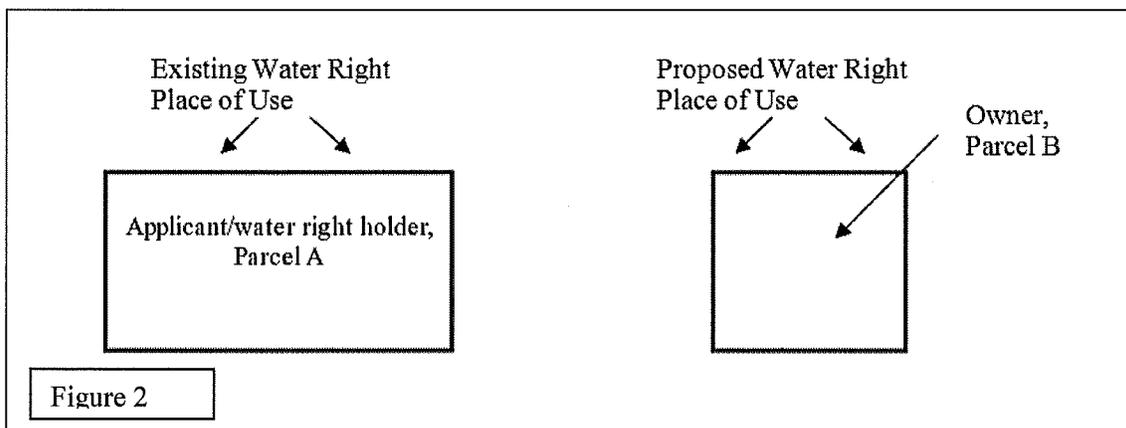
The following signature guidelines apply:

- For a sole proprietorship, the owner must sign the application.
- For a partnership, at least one partner must sign the application.
- For a corporation, a principal executive officer must sign the application

If there is more than one property owner or if there is a controlling interest other than the owner, all owners or individuals with controlling interest must sign the application or form. For example in Figure 1 below, the applicant/owner (Parcel A) proposes to change the place of use for his portion of a water right to Parcels C and D. The applicant would need to secure the signatures of land owners for Parcel B, C and D in order to file the application for change.



If the water right holder does not own either parcel, only the water right holder and owner of the proposed place of use are required to sign the application or form. For example in Figure 2 below, the applicant (within Parcel A) proposes to change the place of use of a water right to Parcel B. The applicant would need to secure the signature of the land owner of Parcel B in order to file the application for change.



Exceptions to Signature Requirements

An exception is made for public entities (e.g. the Public Works Director of a municipality, or the chair of a community water system), provided that legal authority to act as the representative is provided. Water system plans, county comprehensive plans or other service area boundary documents can establish an intent to serve water.

An exception is made for legal representatives, trustees, or others to sign provided that authority to act as the legal representative is provided. For example, if an attorney is acting on behalf of a property owner, the attorney may sign the application. Ecology staff may supplement the file with documentation that the attorney is acting in that capacity.

An exception is made for the comprehensive signature requirement in cases where there is clear documentation by court decree, property transfer deed, or other document showing that a property owner has no ownership or interest in the water right, e.g. a divorce decree. Ecology at its sole discretion may waive the signature requirement. In this event, Ecology will contact those whose signatures are absent. In order to provide opportunity for comment, a decision on whether to proceed with the application without all signatures will not be made until thirty days after documentation by Ecology that such contact has occurred. Ecology will consider any response in its decision. Be aware that problems can arise when there is an ownership dispute; Ecology has no authority to resolve ownership disputes. If it is uncertain if all parties with equity interest are informed and support the action, then Ecology will not proceed until the uncertainty is resolved.

An exception is made to the comprehensive signature requirement in cases where water is conveyed to the trust water program. RCW 90.03.030 provides that water right holders may convey water rights downstream. Signatures of property owners who own land under rivers or streams (e.g. the proposed place of use for trust water rights) shall not be required.

In the case of any exception to the signature requirement, the exception must be clearly described and all accompanying documentation must be included in the file, including the steps taken to obtain signatures.

Administration

The names and addresses provided will be entered into the Water Right Tracking System (WRTS) under 'Last Known Contact', and in some cases will supersede addresses in the application or permit record, provided legal interest in the application or permit is demonstrated.

The applicant is responsible for paying fees associated with the application or form. All required fees must be received prior to issuance of permits, certificates, superseding certificates, amended claims, certificates of change, or assignments and extension requests.

Inability of the applicant to obtain all signatures should be evaluated on a case by case basis. If improper signatures are discovered later, then the application will be returned. The applicant will be given a reasonable time to obtain required signatures.

New Water Right Applications

The applicant (or authorized representative) and the landowner(s) of the place of use, if different than the applicant, must certify that the information in the application is true and accurate, and print their name, and sign and date the application.

The legal owner or part owner of the land where the water will be used must sign and date the application, if different than the applicant (WAC 508-12-130). The application must also contain the address of the legal owner.

By signing the application, the applicant allows Ecology staff access to the site for inspection and monitoring.

Water Right Change Applications

The applicant must certify the information in the application is true and accurate, then sign and date the application. In addition, when the applicant does not own the land where the water right is proposed to be used when a change of place of use is requested, the application must be signed by the legal owner of the land comprising the proposed changed place of use. When the applicant holding the water right does not own the land comprising the existing place of use and requests a change of place of use to other land, then the signature of the owner of the land comprising the existing place of use is not required. The address of the legal owner of the proposed place of use must also be on the application.

By signing the application, the applicant allows Ecology staff or Water Conservancy Board members access to the site for inspection and monitoring.

Reservoir Applications

The applicant must sign and date the application. If the applicant is not the owner of the property, the property owner's name, signature and address must be included.

Voluntary Relinquishment (or Partial Relinquishment) of a Water Right Certificate

The signers of the form must declare that the statements made are true and correct. This form requires the printed name, signed name, and date, of all persons holding or claiming to hold an interest in the water right certificate. If Ecology receives signatures for some, but not all, parties with an equity interest in a certificate, then the form shall apply to partial relinquishment of the water right. The holder of the certificate must sign and date the form in the presence of a notary.

Application for an Amended Water Right Claim

The applicant must affirm the information is true and accurate, and sign and date the application.

Voluntary Abandonment and Voluntary Partial Abandonment of a Water Right Claim

This form requires the printed name, signed name, date, and where signed, by all persons holding or claiming to hold an interest in the claim. If Ecology receives signatures for some, but not all, parties with an equity interest in a claim, then the form shall apply to partial abandon of the claim.

Construction Notice

The applicant must certify that they are the holder of the permit or are the authorized representative. The form requires the printed name, signed name, date, address and telephone number (if available).

Proof of Appropriation and Project Completion

The permit holder must certify the appropriation of water for the authorized beneficial use is complete, the notice and documents are true and accurate, and the terms of the permit or change are in compliance with the law. The permit holder must sign and date the notice in the presence of a notary.

Request for a Conforming Municipal Supply Document

The person filing the request must print their name and phone number, indicate their title or interest in the water right, and sign and date the request.

By filing this request, the person acknowledges they are requesting a Superseding Water Right document to reflect the municipal status of the water right (RCW 90.03.560).

Showing of Compliance with RCW 90.44.100(3)

The person filing the Showing of Compliance must complete the affidavit certifying that the well complies with the statutory criteria. The person filing must sign and date the notice in the presence of a notary.

Assignment of Application or Permit

Rights to groundwater and surface water under a permit attach to the applicant and not to the land. Property rights associated with the use of water become appurtenant to the land only after perfection. Applications and permits are personal property and must be assigned to transfer ownership. (see Madison v. McNeal; Shuh v. DOE; Hasse v. DOE; Stout v. DOE). The holder(s) of the application or permit and the person(s) it is being assigned to must provide their address, telephone number (if available), and sign and date the form in the presence of a notary.

In the event that the applicant or authorized representative is deceased, Ecology will accept signature of the heir apparent or a party with a controlling interest in the application. Ecology may require evidence of testamentary or probate documents (e.g. a will or order/deed from the probate court). If the applicant or authorized representative cannot be located, or no evidence of controlling interest in an application is provided, Ecology will attempt to return the application as defective to the last known property address.

Request for Administrative Confirmation of Division of a Water Right (POL1070)

Each property owner must complete and sign and date the request. The signatories agree to divide the water right consistent with the apportioning detailed on the form and consistent with historic beneficial use. Each property owner is responsible for paying associated fees. All fees must be received before a superseding certificate can be issued.

Application to Enter a Water Right into the Trust Water Rights Program

The applicant must sign and date the application. In addition, the owner of the water right and existing place of use must sign and date the application. If the water right is in an irrigation district, the application must be signed by a representative with signature authority for the irrigation district.

Seasonal Changes

The applicant must certify that the information in the application is true and accurate, and sign and date the application. Signatures are required in the same manner as for change applications. At the end of the period authorized by the seasonal change, the water right reverts back to the original place of use.



Ken Slattery
Program Manager
Water Resources Program

Special Note: These policies and procedures guide water resources program staff in administering laws and regulations, to ensure consistency. These policies and procedures are not formal administrative regulations adopted through a rule-making process. In some cases, the policies may not reflect later changes in statute or judicial findings, but they indicate Ecology's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.

WATER RESOURCES PROGRAM BUSINESS TEAM OPERATING PROCEDURES

Contact: Policy and Planning Section Effective Date: 11/16/2009

Purpose: To provide guidance to water resources staff on business team expectations, performance, and standard operating procedures.

Application: This guidance applies to all water resource program business teams.

This guidance supersedes any previous Guidance, Procedure, Policy, Interpretive Statement, Focus Sheet or other stated Ecology viewpoint with which it may conflict.

Background

The Water Resources Program frequently uses business teams to address policy issues, implement program decisions, and coordinate regional and headquarters business practices. These teams develop the policies, procedures, and guidance that affects the daily work of water resources staff. Typically, over one-third of all water resources staff have direct interaction on business teams. The program intends these Standard Operating Procedures (SOP) to streamline team functions and to set expectations for business team sponsors and for staff taking part on business teams.

Standard Operating Procedures

The Water Resources Program has adopted the following SOP's for program business teams:

Business Team Framework

- The Water Resources Program Management Team (PMT) will create all business teams.
- Each business team will have a PMT Sponsor and a Business Team Lead.
- The PMT Sponsor will select the Business Team Lead, with approval from PMT.
- Unless otherwise directed by PMT, each business team will include representatives from each region, headquarters, and the Office of Columbia River.
- PMT should ensure appropriate cross representation between business teams when assigning business team membership.
- The PMT will select an appropriate rotation frequency for PMT Sponsors. PMT Sponsors will select an appropriate rotation frequency for Business Team Leads to provide for innovation, work sharing, and career development.

- Where appropriate, assignment of business team leads and members will be reflected in Personnel Description Forms (PDF's).
- A list of all business teams and the membership of each will be maintained at the program's home SharePoint site.

Operational Duties

The PMT will:

- Make final decisions on business team recommendations brought to PMT by the PMT Sponsor.
- Review all business team work plans annually.

The PMT Sponsor will:

- Assign all business team work.
- Raise business team recommendations to PMT for decision as appropriate.
- Facilitate participation by business team members,
- Assist members in developing consensus on work assignments, and represent the business team at PMT.

The Business Team Lead will:

- Coordinate business team work while considering how to use team members' time to best effect, using tools such as telephone and video conference calls, NetMeeting, and SharePoint in contrast to face-to-face meetings.
- Schedule and run team meetings, including developing agendas, and recording and posting meeting minutes.
- Represent the business team at PMT briefings.
- Be responsible for helping the business team reach consensus on work products and any decisions.

Each business team member will:

- Regularly consult with their respective senior staff, unit supervisors, and section manager on issues related to business team work.
- Provide informed advocacy for their region, unit, or office in business team work products and recommendations.

Operations

- Each business team shall develop a team charter and workplan for PMT approval. The team shall review and update these documents annually.
- Business teams will strive for consensus in their work products.
- Where the team cannot reach consensus, the Business Team Lead and PMT Sponsor will work with business team members to develop a Majority and Minority opinion paper. The opinion paper shall discuss the controversy, pros and cons of each position, and how

it will affect program work product. The PMT Sponsor, Business Team Lead, and relevant business team members will present the paper to PMT for decision.

- If Assistant Attorney General (AAG) support is necessary, the Business Team Lead will make such requests, on approval of the PMT Sponsor. The Business Team Lead will then convey the AAG advice to the business team. The Business Team Lead or PMT Sponsor may coordinate follow-up dialogue with the business team and the AAG to resolve outstanding issues or questions.
- Business teams shall forward their recommendations to PMT via the PMT Sponsor for approval. The recommendations should include information on how the decision / action would affect staff training needs and program database development.
- Business teams shall implement PMT decisions on business team work. To implement, the team shall document the decision, disseminate the decision, and assist in training staff.
- PMT members will assist in adapting work behavior to business team decisions.

Procedures

Procedure Number	Procedure	Responsible Party
1	Investigate the problem or issue	Business Team
2	Propose a solution to the problem or issue	Business Team\PMT Sponsor
3	Decision on proposed solution	PMT
4	Document the decision	Business Team Lead
5	Implement the solution	Management\Supervisors\BT
6	Train implementation staff and end users	Business Team
7	Perform quality assurance and control	Business Lead
8	Correct if needed	Management\Supervisors


 Ken Slattery, Program Manager

Special Note: These policies and procedures guide water resources program staff in administrating laws and regulations, to ensure consistency. These policies and procedures are not formal administrative regulations adopted through a rule-making process. In some cases, the policies may not reflect later changes in statute or judicial findings, but they indicate Ecology’s practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.

List of Current Formal / Informal Business Teams – see Water Resources SharePoint site.

**Staff Guidance for Administration of
Chapter 173-153 WAC
Water Conservancy Boards**

October 31, 2006

Table of Contents

Chapter 1 – Definitions..... 4
Chapter 2 – Outline of the Staff Guidance Document..... 6
Chapter 3 – Maintaining a water right transfer application dual-filed with a board..... 6
Chapter 4 – Review of and issuance of administrative orders on records of decision 11
Chapter 5 - Technical Assistance..... 16
Chapter 6 – Training 17
Chapter 7 - Final review and decision on a petition to establish or restructure a board..... 24
Chapter 8 - Communication between the water conservancy board coordinator and regional offices 28
Chapter 9 - Communication between boards and counties with the water conservancy board coordinator..... 29
Chapter 10 - Communication between a board or county and the designated Ecology regional representative..... 32
Chapter 11 - Reporting Requirements 34
Appendices - 35

- | | |
|--|--|
| <u>Additional Information Request Letter</u> | <u>Petition Checklist to Restructure a Board</u> |
| <u>Administrative Order on ROD – Affirm</u> | <u>Petition Checklist to Create a Board</u> |
| <u>Administrative Order on ROD – Modify</u> | <u>Primary Contact Report</u> |
| <u>Administrative Order on ROD – Reverse</u> | <u>Protest Receipt Letter</u> |
| <u>Application Acceptance Memo</u> | <u>Public Notice Template</u> |
| <u>Application Progress Sheet</u> | <u>Record of Decision, Form # 040-105</u> |
| <u>Board Approval Letter - Sample</u> | <u>Record of Decision Receipt Letter</u> |
| <u>Checklist for Ecology Regional Staff</u> | <u>Return Without Action Letter</u> |
| <u>Continuing Education Confirmation Letter</u> | <u>Report of Examination, Form # 040-106</u> |
| <u>Continue Processing Inquiry Letter</u> | <u>Report to Legislature Form</u> |
| <u>Decline to Process Letter</u> | <u>Restructure Approval Letter</u> |
| <u>Flow chart-DOE Review of a Record of Decision</u> | <u>Technical Assistance Case Studies</u> |
| <u>Flow chart - Board Change Application Process</u> | <u>Term Expiration Letter</u> |
| <u>Incomplete Continuing Ed Documentation Letter</u> | <u>Thirty-day Extension Letter</u> |
| <u>Incomplete Petition Package</u> | <u>Training Completion Letter</u> |
| <u>Incomplete Restructure Petition Package</u> | <u>Training Credit Request Form # 040-104</u> |
| <u>Ineligibility Notification</u> | <u>Training Materials Letter</u> |
| <u>Interested Parties Letter</u> | <u>Training Certificate</u> |
| <u>Internet Withdrawal Notice</u> | <u>Training Status Memo</u> |
| <u>Number Assign Memo</u> | <u>Withdrawal of ROD/ROE Form # 040-107</u> |

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

GUI-4100

WATER RESOURCES PROGRAM GUIDANCE

GUIDANCE FOR ASSISTING WATER CONSERVANCY BOARDS AND REVIEWING RECORDS OF DECISION

Resource Contact: Water Conservancy Board Coordinator

Revised: August 1, 2006

References: RCW [90.03.380](#) Chapter [90.80](#) RCW
RCW [90.03.390](#) Chapter [173-153](#) WAC
RCW [90.44.100](#)

Purpose: To provide guidance and ensure statewide consistency and efficiency to the Water Resources Program staff that work directly with water conservancy boards (boards) and review the records of decision made by the boards. Ecology recognizes the expertise of its staff in relation to boards is specific to water law and implementation of that law as it pertains to processing water right transfer applications. Ecology staff does not possess the knowledge of local government operational laws and regulations and cannot provide specific guidance about internal operations of boards.

This document is also intended to provide understanding as to how the boards, counties, and Ecology work together as cooperative agencies as boards process water right change applications. This guidance is based on the water conservancy board statute (Chapter 90.80 RCW) and rule (Chapter 173-153 WAC). It is intended to explain current requirements, and not to set forth additional requirements or interpretation of law beyond what is currently required by the statute or rule.

Application: This guidance is for Water Resources Program staff as they fulfill their authorities related to boards.

This guidance supercedes any previous guidance regarding water conservancy boards with which it conflicts.

This guidance may be supplemented from time to time as the program gains additional experience with water conservancy boards.

Chapter 1 – Definitions

“**Alternate**” means an individual:¹

- a. Who is appointed by the county legislative authority or authorities under RCW 90.80.050(3);
- b. Who serves a six-year term;
- c. Who is trained under the requirements of RCW 90.80.040 and WAC 173-153-050; and
- d. Who, while serving as a replacement for an absent or recused commissioner:
 - i. May serve and vote as a commissioner;
 - ii. Is subject to any requirement applicable to a commissioner; and
 - iii. Counts toward a quorum.

“**Commissioner**” means an individual who is appointed by the county legislative authority or authorities as a member of a water conservancy board under RCW 90.80.050(1) or an alternate appointed under RCW 90.80.050(3) while serving as a replacement for an absent or recused commissioner.²

“**County**” means the county level legislative authority or identified lead legislative authority for communicating with Ecology. Counties are limited in their responsibilities toward boards. They are an important, and sometimes overlooked, partner in Ecology's work with boards. It is important to keep them informed. Counties are responsible for establishing a board, appointing board commissioners, and have the authority to dissolve a board. They must also ensure the appointed board commissioners meet the criteria defined in RCW 90.80.050.

“**Database**” means the water conservancy board database maintained by the water conservancy board coordinator.

“**Record of decision (ROD)**” means the conclusion reached by a water conservancy board regarding a transfer application, with documentation of each board commissioner's vote on the decision. The record of decision must be on a form provided by ecology and identified as a Record of Decision, [form number 040-105](#).³

¹ [RCW 90.80.010\(1\)](#)

² [RCW 90.80.010\(3\)](#)

³ [RCW 90.80.010\(6\)](#); [WAC 173-153-030](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

“Regional representative” means the person or persons in each region designated by the director or his or her designee to respond to requests from boards for technical assistance as provided in RCW 90.80.055(1)(d) and provide final review of RODs issued by a board and to issue an administrative order affirming, modifying, or reversing the record of decision.⁴

"Report of examination (ROE)" means the written explanation, factual findings, and analysis that support a board's record of decision. The report of examination is an integral part of the record of decision. The report of examination must be on a form provided by ecology and identified as Water Conservancy Board Report of Examination, [form number 040-106](#).⁵

“Technical assistance” means guidance provided by Ecology to counties and boards to further a board’s operations and application evaluation.

“Training credit request” means a written request by a board commissioner to receive credit for participating in an educational activity not provided or sponsored by Ecology Water Resources Program, and associated with the work of a board. To ensure credit is given, it is suggested a request form be submitted for any training not arranged by the water conservancy board coordinator. The request for training credit must be on a form provided by ecology and identified as Water Conservancy Board Training Credit Request Form, [form number 040-104](#).⁶

"Water conservancy board coordinator (coordinator)" means the person designated by the director or his or her designee to coordinate statewide water conservancy board activities, communication, and training, and to advocate for consistent statewide implementation of Chapter 90.80 RCW and Chapter 173-153 WAC.⁷ The coordinator must maintain certain information regarding all boards statewide. The coordinator receives requests from various agencies, legislators, attorneys, and other public entities about boards. The coordinator is also responsible for writing annual reports, planning commissioner trainings, providing technical assistance, and communicating updates on court decisions and legislation with boards.

“Withdrawal of a record of decision (withdrawal)” means a written decision reached by a water conservancy board to withdraw from the Department of Ecology, an ROD and ROE including the entire water right file associated with that decision. A board may withdraw the ROD during the period allowed for Ecology’s review. The decision to withdraw an ROD must be made by a majority of a quorum of a board and documented on a form provided by Ecology and identified as a Decision to Withdraw a Record of Decision and Report of Examination, [form number 040-107](#).⁸

⁴ [RCW 90.80.055\(1\)\(d\)](#); [RCW 90.80.080\(4\)](#)

⁵ [RCW 90.80.070\(4\)](#); [WAC 173-153-030](#)

⁶ [WAC 173-153-050\(7\)](#)

⁷ [WAC 173-153-030](#)

⁸ [WAC 173-153-150\(9\)](#)

Chapter 2 – Outline of the Staff Guidance Document

Ecology has five primary responsibilities directly related to water conservancy boards.

- Maintaining a water right transfer application dual-filed with a board;⁹
- Review of and issuance of administrative orders on records of decision.¹⁰
- Technical assistance;¹¹
- Training;¹²
- Final review and approval of a petition to establish or restructure a board.¹³

The five primary responsibilities are discussed in the following chapters. Each chapter is outlined as follows:

- Rule considerations: This section discusses the consideration given as Chapter 173-153 WAC was amended in 2003 and 2006.
- Assigned staff: This section identifies the employees assigned to fulfill responsibilities described within the chapter.
- Responsibilities of the assigned staff: This section describes staff responsibilities and explains related board functions.
- Time requirements: This section identifies any time requirements for fulfilling responsibilities described within the chapter.

Chapter 3 – Maintaining a water right transfer application dual-filed with a board

Rule considerations

In the rule, when discussing Ecology's role as a board processes a water right change application, strong consideration was given to the boards' status as a separate unit of local government in the state¹⁴ and an independently funded entity.¹⁵ Ecology staff understands that boards are tasked with making independent and sometimes difficult decisions regarding water right change proposals. The boards are expected to thoroughly investigate the water right change proposal, make a tentative determination to the extent and validity of the existing right, and make

⁹ [WAC 173-153-070\(14\)](#)

¹⁰ [RCW 90.80.080](#)

¹¹ [RCW 90.80.055\(1\)\(d\)](#)

¹² [RCW 90.80.040](#); [WAC 173-153-050](#)

¹³ [RCW 90.80.030](#)

¹⁴ [RCW 90.80.050\(1\)](#)

¹⁵ [RCW 90.80.060\(2\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

the best possible decisions based on the information gathered by the board. Technical assistance shall be solely in the form of guidance and shall not dictate or otherwise direct any board to reach a specific conclusion regarding any aspect of application processing or of a board's administrative functions.¹⁶

Assigned staff

Designated regional representatives are Ecology's assigned staff for receiving an application, entering into Ecology's database to ensure the application is dual filed, providing technical advice and reviewing board issued decisions.

Responsibilities of the assigned staff

1. The board requires the applicant to ensure that the application is complete when filed.¹⁷ It is suggested the board use a [progress sheet](#).
2. The board reviews the application and requires the applicant to provide any additional necessary information.¹⁸
3. If an application is filed directly with and accepted by a board, the board assigns it an application number and forwards the optional [application acceptance memo](#) and the original application to the designated regional representative *within 5 business days* of accepting the application for processing.¹⁹
4. Upon receipt of the original application forwarded by a board, the regional representative may (although not required to) review the application and comment to the board if it appears that the application form is incomplete. A complete application includes a map.
5. Upon request by the board, the regional representative provides complete copies of any water right files and/or water right change files related to an application being processed by a board.²⁰
 - a. Copies are provided at no charge to the board;²¹
 - b. Requests for files unrelated to applications being processed by a board may be subject to the Public Records Act.
6. Document in WRTS the date Ecology receives the original²² application filed directly with and accepted by a board and the unique number assigned by the board as defined in rule.²³

¹⁶ [WAC 173-153-120\(5\)](#)

¹⁷ [WAC 173-153-070\(6\)](#); [RCW 90.03.470\(1\)](#)

¹⁸ [WAC 173-153-070\(7\)](#)

¹⁹ [WAC 173-153-070\(12\)](#)

²⁰ [WAC 173-153-060\(2\)\(a\)](#)

²¹ [WAC 173-153-060\(2\)\(a\)](#)

²² [WAC 173-153-070\(12\) and \(13\)](#)

²³ [WAC 173-153-070\(8\) through WAC 173-153-070\(11\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- a. Update data as appropriate,
 - b. The complete application is considered dual-filed with the board and Ecology once it is received by the department;²⁴
 - c. Ecology will not take any action on the application while it is being processed by the board.²⁵
7. Promptly comply with a written request from an applicant to convey a copy of a water right change application already on file with Ecology to a board with jurisdiction.²⁶
- a. Copies are provided at no charge to the board;²⁷
 - b. Requests for files unrelated to applications being processed by a board may be subject to the Public Records Act.
8. Establish an application file and appropriately make record of the application.²⁸ The application is considered dual-filed.²⁹
9. Ecology adopts the date accepted by the board as the processing priority date.
10. Reference the board-assigned number on all communication with boards, applicants, and consultants during the time the application is under the jurisdiction of the board.³⁰
11. Assign a state water right change application number within 30 days of receipt of the application and send a [letter](#) informing the board of the Ecology-assigned number.³¹
- a. The Ecology-assigned number is not used by the board in processing the application.³²
 - b. The Ecology-assigned number is used for Ecology's internal administrative purposes only.³³
 - c. The Ecology-assigned number becomes the primary number assigned to the file *after* the board's responsibility for the application is complete.
12. Document in WRTS the Ecology-assigned number.

²⁴ [WAC 173-153-070\(14\)](#)

²⁵ [WAC 173-153-070\(15\)](#)

²⁶ [RCW 90.80.070\(1\)](#); [WAC 173-153-070\(17\)](#)

²⁷ [WAC 173-153-060\(2\)\(a\)](#)

²⁸ [WAC 173-153-070\(14\)](#)

²⁹ [WAC 173-153-070\(15\)](#)

³⁰ [WAC 173-153-070\(10\)](#)

³¹ [WAC 173-153-070\(13\)](#)

³² [WAC 173-153-070\(13\)](#)

³³ [WAC 173-153-070\(13\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

13. File the copy of public notice provided by the board at the time of publication. The copy informs Ecology of publication and that protests may be received.
14. Provide any protests ([letter](#)) received by Ecology to the board within 5 days of receipt of the protest.³⁴
15. Provide [technical assistance](#) when requested.
16. If Ecology is notified by the board that it declined to process the application, send a [letter](#) to the applicant requesting the applicant to indicate in writing whether he/she wants the application to be processed by Ecology.³⁵
17. May send a [letter](#) requesting further written explanation regarding the board's decision not to process the application if the board declines to process an application and the applicant files a written request that Ecology process the application.³⁶
18. If an applicant requests an application be withdrawn from the board, the application is no longer filed with either the board or Ecology. A new application must be filed with either a board or Ecology and the application will receive a new priority processing date.
19. If the application being processed by the board is for transferring water into trust:
 - a. Contact the regional trust water coordinator;
 - b. Keep the regional trust water coordinator informed of application progress;
 - c. Provide technical assistance, as requested by the board.
20. If the board requires an applicant to consult with a licensed independent hydrogeology consultant, strongly suggest to the board that the consultant contact Ecology's hydrogeologist for consultation.
21. No scheduled investigative or evaluative work on the application will be conducted by Ecology on the application but on request by the board, technical assistance may be provided.

Time requirements

1. No time requirement is given in statute or rule for providing a water right file related to a current application to a board. It is generally suggested staff respond to the needs of the

³⁴ [WAC 173-153-090 \(2\)](#)

³⁵ [WAC 173-153-070 \(15\)](#)

³⁶ [WAC 173-153-070 \(21\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

board in a timely manner in order to encourage board efficiency. The response time may vary depending on the specific need and availability of staff.³⁷

2. The statute only states that Ecology will reply *promptly* to a request to convey to a board a water right change application on file with Ecology. It is generally suggested staff respond to the needs of the board and applicant in a timely manner in order to encourage board efficiency.³⁸
3. Thirty (30) days from the date the complete application is received from the board to assign and notify the board of the Ecology-assigned application number.³⁹
4. Five (5) days to provide a copy to the board of any protests received by Ecology.⁴⁰

³⁷ [WAC 173-153-060\(2\)\(a\)](#)

³⁸ [RCW 90.80.070\(1\)](#); [WAC 173-153-070\(17\)](#)

³⁹ [WAC 173-153-070\(13\)](#)

⁴⁰ [WAC 173-153-090\(2\)](#)

Chapter 4 – Review of and issuance of administrative orders on records of decision

Rule considerations

When discussing the review of RODs in the rule, strong consideration was given to the boards' status as a separate unit of local government in the state⁴¹ and an independently funded entity.⁴² The rule considers Ecology's review to be objective and recognizes methods used by a board to reach its conclusion in the ROD may be innovative and resourceful. However, Ecology's review of an ROD is directed by legal guidance as well as agency and program policy as it represents interpretation of water law.

Assigned staff

1. Designated regional representatives are Ecology's assigned staff for reviewing each ROD issued by a board.
2. The program web coordinator is the contact for Internet posting of RODs.

Responsibilities of the assigned staff

1. All records of decision and reports of examination must be reviewed by Ecology.⁴³ (See the [DOE review of a record of decision](#) flow chart)
2. Document the date the ROD/ROE is received from the board.⁴⁴
3. The regional representative may return, without action, the ROD/ROE with a [letter](#) to the board if:
 - a. An ineligible board commissioner⁴⁵ has voted and the vote is critical to the outcome of the decision;
 - b. The record of decision was not adopted by a majority vote of the board.⁴⁶
 - c. The board acted upon an application outside the authority of the board.⁴⁷
 - d. The record of decision is adopted by two alternates without the vote of a regular commissioner.

⁴¹ [RCW 90.80.050\(1\)](#)

⁴² [RCW 90.80.060\(2\)](#)

⁴³ [RCW 90.80.080\(2\)](#); [WAC 173-153-150\(2\)](#)

⁴⁴ [WAC 173-153-150\(1\)](#)

⁴⁵ [RCW 90.80.040](#); [WAC 173-153-150\(5\)\(b\)](#)

⁴⁶ [RCW 90.80.070\(4\) and \(5\)](#); [WAC 173-153-150\(5\)\(b\)](#)

⁴⁷ [WAC 173-153-150\(5\)\(b\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

4. Send [letter](#) to board documenting the date Ecology received the ROD/ROE from the board.⁴⁸
5. Scan, if needed, and email the ROD/ROE to the web coordinator to place on the Internet.⁴⁹
6. Web coordinator posts documents on the Internet and notifies the region and coordinator.⁵⁰
7. If the ROD/ROE is withdrawn by the board, scan, if needed, and email the signed withdrawal form to place on the Internet.
8. Web coordinator removes the ROD/ROE from the Internet and replaces it with a copy of the board's written withdrawal form and a [notice](#) that the decision has been withdrawn.⁵¹
9. Review the ROD for:
 - a. Compliance with applicable law and regulation;⁵²
 - b. The completeness of the record developed by the board;⁵³
 - c. Any other issues related to the application evaluation, for example, whether it is clear within the decision what will be the character of the water right once the change is complete some years in the future;⁵⁴
 - d. Letters of concern, objection, or support from the Internet posting, if received within 30 days of Ecology's receipt of the ROD.⁵⁵
 - e. Conflict of interest of participating commissioners and alternates.⁵⁶
10. Ecology will not evaluate the internal operations of a board as it reviews a board's record of decision except to the extent that such review is necessary to determine whether the board's decision was in compliance with state laws and regulations concerning water right transfers, including possible cases of a conflict of interest as identified in RCW 90.80.120.⁵⁷
11. Review the ROD and respond using one of the following options within 45 days of receipt of the boards decision, unless notice is given to the board that the review period has been [extended an additional 30 days](#) for a total not to exceed 75 days:⁵⁸

⁴⁸ [WAC 173-153-150\(1\)](#)

⁴⁹ [WAC 173-153-150\(1\)](#)

⁵⁰ [RCW 90.80.080\(2\)](#); [WAC 173-153-150\(1\)](#)

⁵¹ [WAC 173-153-150\(9\)](#)

⁵² [RCW 90.80.080\(2\)](#); [WAC 173-153-150\(2\)](#)

⁵³ [WAC 173-153-130](#); [WAC 173-153-150\(2\)](#)

⁵⁴ [WAC 173-153-150\(2\)](#)

⁵⁵ [WAC 173-153-150\(3\)](#); [RCW 90.80.080\(3\)](#)

⁵⁶ [RCW 90.80.120](#)

⁵⁷ [WAC 173-153-150\(4\)](#)

⁵⁸ [RCW 90.80.080\(4\)](#); [WAC 173-153-150\(5\)\(c\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- a. Issue a [final administrative order](#) affirming the ROD if during the review Ecology finds that the board thoroughly documented its investigation and its recommendations in the ROE, and complied with applicable state water law.⁵⁹
- b. Issue a [final administrative order](#) modifying the ROD, specifying the part(s) of the ROD that have been modified.⁶⁰ An administrative order to modify may be issued if the board has fully documented its investigation and its recommendations in the ROE,⁶¹ and has, otherwise, complied with applicable state water law, but the ROE generally requires:
 - i. Additional provisions;
 - ii. Revisions to the substance of the ROE that do not require Ecology staff to substantively investigate or recalculate;
 - iii. Grammatical errors that do not change the final conclusion of the ROD/ROE;
 - iv. Specific information as to which part(s) of the ROD has been modified.⁶²
- c. If during the review period of the ROD/ROE Ecology finds deficiencies in the ROD/ROE, request that the board [withdraw](#) its record of decision⁶³ to make appropriate modifications. Withdrawing an ROD/ROE from Ecology is a decision of the board made at an open public meeting and documented on a [form](#) as required in rule.
- d. Issue a [final administrative order](#) reversing the ROD/ROE if the board declines to withdraw the ROD/ROE or the ROD/ROE contains conclusions that are insufficient or contrary to state water law. When Ecology reverses a board ROD/ROE all procedural and substantive defects must be detailed.⁶⁴
- e. Remand the ROD/ROE back to a board when Ecology determines a conflict of interest has occurred.⁶⁵

It is up to each reviewer, in consultation with the section manager, to determine the extent of modification necessary for each board decision. It is expected that the reviewer will consult with the board regarding the issues identified on review prior to issuing a final order, and make a case-by-case determination as to whether to modify, remand, reverse, or request withdrawal of a decision. Should a board opt not to withdraw an ROD/ROE from Ecology, the reviewer, in consultation with the section manager, must decide whether to modify or reverse the decision.

⁵⁹ [WAC 173-153-150\(6\)](#); [RCW 90.80.080\(4\)](#); [WAC 173-153-130\(5\) and \(6\)](#)

⁶⁰ [WAC 173-153-150\(6\)](#)

⁶¹ [RCW 90.80.080\(4\)](#); [WAC 173-153-130\(6\)](#); [WAC 173-153-140\(3\)](#)

⁶² [WAC 173-153-150\(6\)](#)

⁶³ [WAC 173-153-150\(9\)](#)

⁶⁴ [WAC 173-153-150\(6\)](#)

⁶⁵ [RCW 90.80.120](#); [WAC 173-153-150\(4\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

12. Send copies of the administrative order to all parties by mail on the same day within 5 days of reaching the decision to:⁶⁶
 - a. The board;
 - b. The applicant;
 - c. Any person who protested;
 - d. Persons who requested notice of Ecology's decision;
 - e. The Washington Department of Fish and Wildlife;
 - f. Any affected Indian tribe;
 - g. Any affected agency;
 - h. Water conservancy board coordinator.
13. If Ecology issues its final administrative order to affirm or modify the ROD/ROE, work directly with the applicant on any further issues regarding the water right change.
14. Upon satisfactory evidence to Ecology showing the transfer has been completed in accordance with the final administrative order authorizing the transfer, conduct a proof examination to verify of the extent of development as authorized.⁶⁷
15. Issue a certificate of change, superseding permit, or a superseding certificate to the water right holder(s) to document the portion of the approved transfer that was accomplished.⁶⁸
16. Evaluate and reply to requests from the applicant for extensions on the project's development schedule.⁶⁹
17. Issue a cancellation order of the transfer authorization if the water right holder authorized to transfer a water right fails to accomplish the transfer in accordance with the authorization or any subsequent extensions granted by Ecology, for fails to comply with the requirements of the transfer authorization.⁷⁰
18. Upon cancellation of the transfer authorization, evaluate the water right to make a tentative determination as to the present validity of the water right and the conditions under which the water right can legally be exercised.⁷¹

Time requirements

⁶⁶ [WAC 173-153-150\(10\)](#)

⁶⁷ [WAC 173-153-160\(1\)](#)

⁶⁸ [WAC 173-153-160\(1\)](#)

⁶⁹ [WAC 173-153-160\(3\)](#)

⁷⁰ [WAC 173-153-160\(4\)](#)

⁷¹ [WAC 173-153-160\(4\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

1. Three business days if received electronically or five business days to place ROD/ROE on the Internet.⁷²
2. Post on the Internet for 30 days.⁷³
3. Ecology has 45 day review of ROD.⁷⁴
4. The 45-day review period may be extended for an additional thirty days by Ecology or at the request of the board or the applicant.⁷⁵
5. Send copies of the administrative order to all parties by mail on the same day within 5 days of reaching the decision.⁷⁶
 - a. The board
 - b. The applicant
 - c. Any person who protested
 - d. Persons who requested notice of Ecology's decision
 - e. Washington Department of Fish and Wildlife
 - f. Any affected Indian Tribe
 - g. Any affected agency
 - h. Water conservancy board coordinator

⁷² [RCW 90.80.080\(2\)](#); [WAC 173-153-150\(1\)](#)

⁷³ [RCW 90.80.080\(2\)](#); [WAC 173-153-150\(1\)](#)

⁷⁴ [RCW 90.80.080\(4\)](#); [WAC 173-153-150\(5\)](#)

⁷⁵ [RCW 90.80.080\(4\)](#); [WAC 173-153-150\(5\)](#)

⁷⁶ [WAC 173-153-150\(10\)](#)

Chapter 5 - Technical Assistance⁷⁷

Rule considerations

When discussing technical assistance within the rule, consideration was given to:

1. The independent status of the water conservancy boards;⁷⁸
2. The board's need to request assistance;⁷⁹ and
3. Understanding of legislative intent when the legislature authorized the creation of boards to expedite the administrative process for water right transfers.⁸⁰

Assigned staff

1. Designated regional representatives are Ecology's assigned staff for technical assistance as it relates to an application before a board;
2. The coordinator is Ecology's assigned staff for technical assistance as it relates to statewide policy/legal issues as well as board process and operational questions;
3. The regional representative or the coordinator may provide assistance on all issues, when requested.

Responsibilities of the assigned staff

1. Staff provide technical assistance to a board:⁸¹
 - a. Upon the board's request;
 - b. To the extent that Ecology has the internal ability to respond;
 - c. As a board reviews applications for formal acceptance.
 - d. As the board investigates the application.
 - e. As the board prepares draft records of decision;
 - f. As the board considers other technical or legal factors affecting the board's development of a final record of decision;
 - g. As the board processes transfers related to trust water.⁸²

⁷⁷ [RCW 90.80.055\(1\)\(d\)](#); [WAC 173-153-120](#)

⁷⁸ [RCW 90.80.050\(1\)](#); [RCW 90.80.060\(2\)](#); [WAC 173-153-120\(5\)](#)

⁷⁹ [RCW 90.80.055\(1\)\(d\)](#); [WAC 173-153-120\(2\)](#)

⁸⁰ [RCW 90.80.005\(3\)](#)

⁸¹ [RCW 90.80.055\(1\)\(d\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

2. Refer to the [Technical Assistance Case Studies](#) document in the appendix for specifics on providing assistance to boards.
3. Provide guidance without dictating or directing a board to reach a specific conclusion regarding any aspect of application processing or of a board's administrative function.⁸³
4. Generally, provide technical assistance without subjection to the Open Public Meetings Act.⁸⁴ Staff may attend board meetings and provide assistance, if requested.

Time requirements

No time requirement is provided in statute or rule. It is generally suggested staff respond to the requests of the board in a timely manner in order to encourage board efficiency. The response time may vary depending on the specific need and availability of staff.

Chapter 6 – Training⁸⁵

Rule considerations

Ecology is given authority to adopt rules including minimum requirements for the training and continuing education of commissioners.⁸⁶ When writing the rule, consideration was given to the volunteer status and personal commitments of the commissioners, the limited funds available to Ecology for implementing the statute, and the boards' ability to reimburse the commissioners for travel expenses associated with training.⁸⁷

In order to provide board commissioners the opportunity to gain a clear understanding of the water right change application process and unique water right issues, trainings provided or sponsored by Ecology are not subject to the Open Public Meetings Act⁸⁸ and limited to board commissioners, their administrative support, board alternates, and Ecology trainers.⁸⁹

Assigned staff

The coordinator is responsible for all coordination, tracking, and communication related to training of board commissioners, alternates, and administrative support. The coordinator may serve as primary facilitator or may identify other staff to assist with facilitation.

Whenever possible, regional representatives assigned to work with boards should also assist in facilitating on-going training of board commissioners.

⁸² [RCW 90.80.055\(1\)\(1\)](#); [WAC 173-153-060\(1\)\(b\)](#)

⁸³ [WAC 173-153-120\(5\)](#)

⁸⁴ [WAC 173-153-120\(6\)](#)

⁸⁵ [RCW 90.80.040](#); [WAC 173-153-050](#)

⁸⁶ [RCW 90.80.040](#)

⁸⁷ [RCW 90.80.030\(2\)](#)

⁸⁸ [WAC 173-153-120\(6\)](#)

⁸⁹ [WAC 173-153-050\(2\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Responsibilities of the assigned staff

1. New commissioner training

New commissioner training is held depending on Ecology staff availability and whether there are sufficient numbers of board commissioners needing training.⁹⁰

New commissioners are required to receive a minimum 32 hour instruction from or sponsored by Ecology and must demonstrate an understanding and sufficient mastery of the training curriculum through an examination.⁹¹ This training is limited to newly-appointed commissioners, alternates, administrative support, and trainers.⁹²

- a. Send out [letters](#) annually (generally in January) to notify counties and boards of any pending term expirations, and reminding counties and boards to contact the coordinator of any other vacancies expected or occurring on a board over the next year.
- b. Use information generated from letters to determine the need for training for new board commissioners.⁹³
- c. Request from counties resolutions appointing new commissioners.⁹⁴
- d. If a vacancy is due to a resignation, request a copy of the resignation letter from the board or, if possible, from the resigning board commissioner⁹⁵ if a letter has not been received.
- e. Determine date and location of the training based on the following criteria:
 - i. Availability of staff to provide the training;
 - ii. Availability of meeting room;
 - iii. Confirmations received from attendees;
 - iv. Convenience for the majority of the confirmed attendees;
- f. Work with the lead trainer to prepare materials for training including:
 - i. Update the RCWs/WACs based on recent legislation and rule adoption;
 - ii. Update materials as appropriate;

⁹⁰ [WAC 173-153-050\(2\)](#)

⁹¹ [WAC 173-153-050\(3\)](#)

⁹² [WAC 173-153-050\(2\)](#)

⁹³ [WAC 173-153-050\(2\)](#)

⁹⁴ [RCW 90.80.050\(1\)](#)

⁹⁵ [WAC 173-153-042\(8\) through WAC 173-153-042\(9\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- iii. Update test materials;
 - iv. Update scenarios;
 - v. Update materials list;
 - vi. Create an attendance sign-in sheet;
 - vii. Reproduce enough copies for attendees
- g. Send out [attendance confirmation](#) to confirmed attendees about 10 working days prior to training.
 - h. If the training program is offered and is not completed within one year of appointment to the board, ecology will may inform the county and request the county to seek the commissioner's resignation.⁹⁶
 - i. If a commissioner is unable to attend the entire training, arrangements should be made with the commissioner for making up the missed time.
 - j. At the beginning of the training, remind all attendees that any personal contact information included on the attendance list is considered a public record.
 - k. Lead the training regarding Chapter 90.80 RCW and Chapter 173-153 WAC and assist in other aspects of the training as appropriate.
 - l. Retain all tests for the file in order to document the commissioner's knowledge of course materials and sufficient mastery of the training curriculum.⁹⁷
 - m. When training is complete, immediately prepare a [letter](#) to the county legislative authority certifying the successful completion of the training by each board commissioner and indicating the commissioner's eligibility to participate in water right change decisions.⁹⁸ Send a copy of the letter to the board.⁹⁹
 - n. Document in the water conservancy board database the training received by all attendees, using the sign-in sheet. Enter into the database all demographic information as needed.
 - o. When time allows, prepare and send [certificates of completion](#) to all commissioners who successfully completed the training.

⁹⁶ [WAC 173-153-050\(1\)](#)

⁹⁷ [WAC 173-153-050\(3\)\(b\)](#)

⁹⁸ [WAC 173-153-050\(4\)](#)

⁹⁹ [WAC 173-153-050\(4\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- p. Make copies, if needed, and file all training documentation in the training file under each board represented at the training. Documentation includes sign-in sheets, tests, materials list, letters to the commissioner, and certificates of completion.

2. Continuing education – Tracking eligibility status

After completing one year of service on a board, a commissioner must complete a minimum of 8 hours continuing education before participating in any decision concerning a water right change application.¹⁰⁰ If a board is restructured, additional training of board commissioners may be required if the restructuring modifies the geographic area of jurisdiction.¹⁰¹

The regional representative must contact the water conservancy board coordinator to document training provided directly to boards. This may include board commissioners participating in a field examination or other training offered at the regional office.

- a. Send out [letters](#) annually (generally in January) to update Ecology staff, counties and boards regarding the eligibility status of each board commissioner, and the number of continuing education hours needed to retain or, as appropriate, regain eligibility. The year in which continuing education is due is based on the original appointment date of each commissioner.¹⁰²
- b. File a copy of each letter in the eligibility file for each board.
- c. File a copy of each letter that indicates expiration of eligibility within the year in the appropriate monthly reminder file.
- d. Check the monthly reminder files each month and send out [ineligibility letters](#) to board commissioners, as appropriate.
- e. Send a copy of the ineligibility letter to the regional representative and county.
- f. The regional representative should set up a system for tracking ineligible board commissioners.
- g. File a copy of the ineligibility letter in the eligibility file of the related board.
- h. File a copy of the ineligibility letter in the ineligible reminder file.
- i. Respond to periodic requests from board commissioners for information regarding eligibility status.

¹⁰⁰ [WAC 173-153-050\(6\)](#)

¹⁰¹ [WAC 173-153-050\(4\)](#)

¹⁰² [WAC 173-153-050\(6\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- j. Do not regulate boards for compliance with the training regulations.
3. Continuing education sponsored by Ecology's Water Resources Program for existing commissioners, alternates, and administrative support.

Generally, Ecology holds at least one annual 8-hour training for all board commissioners to provide updated information regarding legislative issues, recent court decisions, changes to policy, and opportunities to share best practices.

- a. Generally, schedule annual "update" training sometime during December through February.
 - b. Assemble topics for the update training agenda:
 - i. From requests solicited directly from the boards;
 - ii. Based on need identified when providing technical assistance to boards;
 - iii. Based on need as identified by regional staff.
 - iv. As dictated by events such as court decisions, AGOs, etc.
 - c. Incorporate in board communications, including the WCB Communicator and emails, information regarding upcoming continuing education opportunities offered by Ecology.
 - d. Decide the format of the training such as number of hours, statewide versus regionally (Eastern, Central, and West side), facilitation requirements, and location.
 - e. Decides date(s) and secure meeting location(s) for each session;
 - f. Send emails to all boards requesting confirmation of attendance to meetings to ensure enough materials for the attendees and size requirement for meeting space.
 - g. Prepare materials for continuing education session, including attendance sign-in sheet;
 - h. Document hours credited for each attendee in the database using the sign-in sheet from the training.
 - i. Document in the database the hours credited for each attendee based on the hours actually attended
 - j. Document on the sign-in sheet the hours credited for each attendee that attends only a portion of the entire session.
4. Continuing education not provided or sponsored by Ecology for existing commissioners, alternates, and administrative support.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Continuing education, other than that provided by or sponsored by Ecology, must be approved by Ecology and reported on the Training Credit Request [Form number 040-104](#).¹⁰³

- a. Respond to information requests regarding training credit, as needed;
- b. Receive training credit request forms from board commissioners¹⁰⁴ and only accepts *after* participation in the activity;
- c. Ensure training credit request forms are complete;
- d. Return incomplete forms and any attachments to the board commissioner¹⁰⁵ with a [letter](#) describing missing information;
- e. Review and process complete forms using the following criteria of acceptable and unacceptable continuing education activities:
 - i. *Acceptable*¹⁰⁶
 - Seminars;
 - Conferences;
 - Classes;
 - Presentations given by others;
 - Readings (this may include books on water resource issues or law, proceedings and papers associated with conferences, etc.);
 - Field experiences;
 - In a forum specifically intended for learning from another person whether it is an author, instructor, speaker, etc.;
 - ii. *Unacceptable*¹⁰⁷
 - Meetings in which the commissioner acts as a member of a committee or integral participant in proceedings, appeals, or litigation;
 - Presentations personally made by, or readings authored by, the commissioner requesting the training. (The research done may be considered. A 2-3 paragraph summary describing the research must be included on the form);

¹⁰³ [WAC 173-153-050 \(11\)](#); [WAC 173-153-050 \(12\)](#)

¹⁰⁴ [WAC 173-153-050 \(12\)](#)

¹⁰⁵ [WAC 173-153-050 \(12\)](#)

¹⁰⁶ [WAC 173-153-050 \(18\)](#)

¹⁰⁷ [WAC 173-153-050 \(19\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- Work done by a commissioner as part of the direct responsibilities on the water conservancy board (e.g., field examines, investigation, discussions on applications, technical assistance received specific to an application, etc.).
 - Topics that do not directly relate to WCB authorities and responsibilities
- f. Document in a [letter](#) to the board commissioner the continuing education hours approved.¹⁰⁸
- g. Send copies of the letter to the related board, Center for Environmental Law and Policy, and the appropriate region.

Time requirements

1. Ecology shall offer training for new commissioners depending on, but not limited to:¹⁰⁹
 - a. Whether Ecology has sufficient staffing resources;
 - b. Whether there are sufficient numbers of board commissioners and alternates requiring training.
2. Continuing education is generally offered at least once per year.
 - a. Ecology may, at its discretion, and in response to requests, provide continuing education periodically.¹¹⁰
 - b. Although nothing is documented in statute or rule, two to three weeks for review of a training credit request appears to be reasonable based on workload and schedule. Ecology will not be expected to respond to requests the same day it is received by the coordinator.
 - c. The credit hours count toward a commissioner's eligibility only upon written confirmation from Ecology.

¹⁰⁸ [WAC 173-153-050 \(13\)](#)

¹⁰⁹ [WAC 173-153-050 \(2\)](#)

¹¹⁰ [WAC 173-153-050 \(10\)](#)

Chapter 7 - Final review and decision on a petition to establish or restructure a board

Rule considerations

Ecology understands the county legislative authority to be responsible for the creation of the board and the appointment of the board commissioners to existing vacancies. As part of that responsibility they must ensure the board consists of qualified board commissioners as it relates to water right holders, non-water right holders, and residence.¹¹¹ Ecology may provide guidance to the counties to assist in consistent application of the law when requested by the county.

Restructuring a board is considered an alteration of the original petition creating the board. Therefore, the rule requires that a similar process to creating a board be followed for restructuring a board.

Boards or county legislative authority or authorities may request to restructure an existing board within its geographic area of jurisdiction.¹¹² Counties and boards are encouraged to work together throughout the restructuring process.¹¹³

Assigned staff

The coordinator is Ecology's assigned staff with counties establishing and restructuring a board.

Responsibilities of the assigned staff

1. Establishing a board
 - a. May make presentations regarding water conservancy boards to counties interested in establishing a board.
 - b. May provide guidance to the county as they prepare the resolution and petition package to submit to Ecology.¹¹⁴
 - c. Receive the petition package through the director¹¹⁵ creating a board submitted by the county legislative authority.
 - d. Using the [Petition Checklist](#) when establishing a board, review the petition package for completeness including:¹¹⁶

¹¹¹ [RCW 90.80.050\(2\)](#)

¹¹² [WAC 173-153-045\(2\)-\(4\)](#)

¹¹³ [WAC 173-153-045\(2\)](#)

¹¹⁴ [WAC 173-153-040](#)

¹¹⁵ [WAC 173-153-040\(1\)\(f\)](#)

¹¹⁶ [RCW 90.80.020](#) through [RCW 90.80.035](#), [WAC 173-153-040\(8\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- i. A copy of the resolution or petition calling for the creation of a board which:
 - Describes the need for the board;
 - Identifies the geographic area in which the board would serve (WRIA, county, multi-county, or multi-WRIA);
 - Describes the proposed method(s) for funding the operation of the board; and
- ii. Summary of public testimony from the public hearing(s);
- iii. A copy of the resolution adopted by the legislative authority(ies) of the count(ies) creating the board, which includes:
 - Includes all items identified in (d)(i) above;
 - Identifies the lead county for boards with jurisdiction in more than one county;
 - Distinguishes establishment of a three or five member board;
 - Identifies any modifications to the initiating petition or resolution; and
 - A finding that the creation of the board is in the public interest.
- iv. Proposed bylaws for the board.
- e. If the petition calling for the creation of a board is submitted by five water right holders and the county requests assistance, work with the region to identify the documentation of the water right for each water right holder listed based on the definition of water right holder provided in RCW 90.80.050(5) and WAC 173-153-030.
- f. If the petition for creating the board is complete, send a [letter](#) to the county legislative authority documenting date petition package was received complete.
- g. If the petition for creating the board is incomplete, send a [letter](#) to the county requesting required information.
- h. Draft a [letter](#) for signature by the director to approve or deny the establishment of the board within 45 days of receiving the county petition.¹¹⁷ When drafting the letter for the director's determination, consideration is made as to:
 - i. Whether the creation of the board would further the purposes of Chapter 90.80 RCW;¹¹⁸
 - ii. Whether the creation of the board is in the public interest,¹¹⁹ including any protest received by the county during the public hearing process;
 - iii. Any training requirements,¹²⁰ including specialized training that may be required due to such items as protests received or geographic jurisdiction of the board.

¹¹⁷ [RCW 90.80.030\(2\)](#)

¹¹⁸ [RCW 90.80.030\(2\)](#)

¹¹⁹ [RCW 90.80.030\(2\)](#)

¹²⁰ [RCW 90.80.030\(2\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

2. Restructuring a board – Number of commissioners
 - a. May provide guidance to the county and/or the board as they prepare the resolution and petition package to submit to Ecology.¹²¹
 - b. Receive the petition package¹²² restructuring a board submitted by the county legislative authority.
 - c. Using the [Restructuring Petition Checklist](#) review the petition package for completeness including:¹²³
 - i. A copy of the resolution or petition calling for the restructure of a board, which:
 - States the manner and the need for restructuring the board;
 - Identifies geographic jurisdictional area within which the board would serve (WRIA, county, multi-county, or multi-WRIA);
 - Distinguishes establishment of three or five member board; and
 - Identifies the lead county for a multi-county or multi-WRIA board.
 - ii. Summary of public testimony from the public hearing(s);
 - d. If the petition to restructure the board is incomplete, sends a [letter](#) to the county requesting required information.
 - e. Draft a [letter](#) for signature by the director to approve or deny the restructuring of the board within 45 days of receiving the petition. When drafting the letter for the director's determination consideration is made as to:
 - i. Whether the restructure of the board would further the purposes of Chapter 90.80 RCW;¹²⁴
 - ii. Whether the creation of the board is in the public interest,¹²⁵ including any protest received by the county during the public hearing process;
3. Restructuring a board – Geographic jurisdiction
 - a. May provide guidance to the county and/or the board as they prepare the resolution and petition package to submit to Ecology.¹²⁶ If the geographic restructuring involves another county or counties, all counties must agree:
 - i. To the number of board commissioners serving on the board;

¹²¹ [WAC 173-153-045 \(3\)](#)

¹²² [WAC 173-153-045 \(6\)](#)

¹²³ [WAC 173-153-045 \(5\)](#)

¹²⁴ [WAC 173-153-045 \(6\)](#)

¹²⁵ [WAC 173-153-045 \(6\)](#)

¹²⁶ [WAC 173-153-045 \(3\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- ii. Whether the commissioners and alternates currently appointed to and serving on the existing board or boards shall continue in that capacity; and
 - iii. That areas within the county may be included within the geographic jurisdiction of the multi-county, WRIA, or multi-WRIA board.
 - iv. If the county legislative authorities included in the restructuring cannot agree to the terms of the restructure using an existing board, the county or counties in which a county legislative authority already has an established board must dissolve the existing board and work cooperatively with the other county legislative authority or county legislative authorities to establish a new board
- b. Receive the petition package¹²⁷ restructuring a board submitted by the county legislative authority.
 - c. Using the [Restructuring Petition Checklist](#) review the petition package for completeness including:¹²⁸
 - i. A copy of the resolution or petition calling for the restructure of a board, which:
 - States the manner and the need for restructuring the board;
 - Identifies geographic jurisdictional area within which the board would serve (WRIA, county, multi-county, or multi-WRIA);
 - Distinguishes establishment of three or five member board; and
 - Identifies the lead county for a multi-county or multi-WRIA board.
 - ii. Summary of public testimony from the public hearing(s);
 - d. If the petition to restructure the board is incomplete, send a [letter](#) to the county requesting required information.
 - e. Draft a [letter](#) for signature by the director to approve or deny the restructuring of the board within 45 days of receiving the petition. When drafting the letter for the director's determination consideration is made as to:
 - i. Whether the restructure of the board would further the purposes of Chapter 90.80 RCW;¹²⁹
 - ii. Whether the creation of the board is in the public interest,¹³⁰ including any protest received by the county during the public hearing process.

¹²⁷ [WAC 173-153-045 \(6\)](#)

¹²⁸ [WAC 173-153-045 \(5\)](#)

¹²⁹ [WAC 173-153-045 \(6\)](#)

¹³⁰ [WAC 173-153-045 \(6\)](#)

- f. Any training requirements, including specialized training that may be required due to such items as a change in geographic jurisdiction of the board.¹³¹

Time requirements

Ecology has 45 days in which to review a county's petition to create or restructure a board.¹³²

Chapter 8 - Communication between the water conservancy board coordinator and regional offices

Communication discussed in this chapter is usually considered informal. Generally, providing a hard copy of your written correspondence or emailing is appropriate for most situations.

1. Regions should communicate with the water conservancy board coordinator:
 - a. When a county indicates the desire to create a board and requests further information.
 - b. When information is received regarding changes to the membership or primary contact on a board.
 - c. When training is provided directly by regional staff to boards. This may include board commissioners participating in a field examination or other training offered at the regional office.
 - d. If specific training needs of boards are identified within your region.
 - e. If a board requests technical assistance regarding board process.
 - f. To provide copies of Ecology's administrative orders related to boards' records of decision.
 - g. If questions arise that may require legal or policy decisions that affect all boards statewide.
2. The water conservancy board coordinator should communicate with the regions:
 - a. When a county indicates the desire to create a board or petitions to create or restructure a board.
 - b. To provide a copy of the [letter](#) approving the creation of a board.
 - c. To provide a copy of the [letter](#) approving the restructuring of a board.

¹³¹ [WAC 173-153-050\(4\)](#)

¹³² [RCW 90.80.030\(2\)](#); [RCW 90.80.050](#); [WAC 173-153-045\(7\)](#)

- d. When corresponding with boards in your region.
- e. When requests for technical assistance regarding a specific applications are received.
- f. Questions or concerns are received regarding specific to regional procedure or policy.
- g. Regarding upcoming board trainings.
- h. When updating board contact information.
- i. When appropriate upon receipt of legislative requests relating to board data and processes.
- j. To provide forms and templates for use by boards and regions.
- k. To inform the region of board commissioner that may have not completed required training prior to making water right change decisions.
- l. To provide a copy of the [letter](#) to county legislative authority indicating successful completion of the minimum 32 hour training.

Chapter 9 - Communication between boards and counties with the water conservancy board coordinator

1. WCB Communicator

This is a communication tool initiated by the coordinator to inform water conservancy boards and counties about current board operations and processes. The coordinator identifies topics to address in the document based on discussions with boards and staff. This document is emailed out periodically (about 2-4 times per year).

2. Counties must communicate with the water conservancy board coordinator:

- a. When submitting the county legislative authority's petition to create a board to Ecology.¹³³
- b. To inform of the appointment of board commissioners including contact information and terms of office.¹³⁴

¹³³ [WAC 173-153-040\(9\)](#)

¹³⁴ [WAC 173-153-042\(1\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- c. To inform of a vacancy on a board and to provide information regarding the reappointment of an incumbent or new appointee, including contact information and term of office.¹³⁵
- d. When submitting the county legislative authority's resolutions to restructure a board.¹³⁶
3. The water conservancy board coordinator must communicate with the counties when:
 - a. Reviewing county legislative authority's petition to create a board for necessary information and completeness and to prepare recommendation to Ecology's director for final decision.¹³⁷
 - b. Reviewing county legislative authority's resolutions to restructure a board for necessary information and completeness and to prepare recommendation to Ecology's director for final decision.¹³⁸
 - c. Responding to questions regarding board vacancies, board commissioner terms, dissolution, or restructuring.
 - d. Periodically to report unfulfilled training requirements.
4. Board commissioners must communicate with the water conservancy board coordinator:
 - a. When changes to board membership occur including resignation.¹³⁹
 - b. When vacancies on a board occur.¹⁴⁰
 - c. Coordinating training for new commissioners.¹⁴¹
 - d. Coordinating and documenting continuing education training opportunities for board commissioners¹⁴²
 - e. [Interlocal Cooperation Agreements](#).¹⁴³
 - f. The [primary contact](#) for a board.¹⁴⁴
 - g. Changes to a board's primary contact information.¹⁴⁵

¹³⁵ [WAC 173-153-042 \(2\)](#) ; [WAC 173-153-042 \(3\)](#)

¹³⁶ [WAC 173-153-045 \(6\)](#)

¹³⁷ [WAC 173-153-040 \(9\)](#)

¹³⁸ [WAC 173-153-045 \(6\)](#)

¹³⁹ [WAC 173-153-042 \(8\)](#)

¹⁴⁰ [WAC 173-153-042 \(9\)](#)

¹⁴¹ [WAC 173-153-050 \(2\)](#)

¹⁴² [WAC 173-153-050 \(10\)](#)

¹⁴³ [RCW 90.80.035 \(2\)](#) ; [WAC 173-153-060 \(9\)](#)

¹⁴⁴ [WAC 173-153-100 \(4\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- h. Request for technical assistance including, but not limited to, board process.¹⁴⁶
 - i. Annual [legislative report](#) on activities of the board.¹⁴⁷
5. Additional support provided by the water conservancy board coordinator:
- a. Requests information from boards in response to specific legislative requests sent through the water conservancy board coordinator.
 - b. Researches and responds to legal or policy questions that may have an affect on boards statewide. Ecology cannot provide direct legal assistance to boards. In instances where a topic may be of general interest to all boards, the coordinator may be able to obtain legal or agency guidance. The coordinator can then share it with all boards and staff statewide.
 - c. Provides, maintains, and updates forms identified in statute and rule to be used by boards and Ecology including:
 - [Record of Decision](#)
 - [Report of Examination](#)
 - [Training Credit Request Form](#)
 - [Withdrawal of Record of Decision from Ecology](#)
 - d. Maintains database on all water conservancy board commissioners, terms, training, and contact information.
 - e. Provides guidance if a board simply isn't sure where to go.
 - f. Provides outreach to counties and public interested in water conservancy boards and their activities including presentations.

¹⁴⁵ [WAC 173-153-100\(4\)](#)

¹⁴⁶ [WAC 173-153-120](#)

¹⁴⁷ [RCW 90.80.150](#); [WAC 173-153-170](#)

Chapter 10 - Communication between a board or county and the designated Ecology regional representative

1. A county must communicate with the Ecology regional representative to provide a copy of the [public notice](#) for the public hearing to create a board at the same time it is submitted for publication.¹⁴⁸
2. A board must communicate and/or provide Ecology regional representatives specific information including:
 - a. To [request](#) a copy of the water right file related to the water right transfer application filed with the board.¹⁴⁹
 - b. To request technical assistance to resolve any problems associated with conflicting applications.¹⁵⁰
 - c. Providing [written documentation](#) of the board's acceptance of an application and the original application to Ecology *within 5 business days* after the board accepts an application for processing including:¹⁵¹
 - i. The original application;
 - ii. The board assigned application number.
 - d. Upon receipt of a written [request](#) by an applicant that an application previously filed with Ecology be conveyed to a board with geographic jurisdiction for processing, provide a copy of the application to the board to review and consider for acceptance. The applicant must also supply a copy of the request to the board. The board can then determine if it wants to consider the application for processing.¹⁵²
 - e. Upon a decision by a board to [decline processing](#) an application, the board must inform the applicant in writing with a copy to Ecology *within 14 business days*.¹⁵³
 - Upon notification by a board to decline processing an application, Ecology may send a [letter](#) to the applicant inquiring of the applicant's desire for Ecology to process the application, which is dual-filed at Ecology. If no response is received, Ecology may cancel the application in accordance with the notice contained in the letter.
 - f. Provide a copy of the [public notice](#) of an application *at the same time* it is submitted for publication.¹⁵⁴

¹⁴⁸ [WAC 173-153-040 \(5\)](#)

¹⁴⁹ [WAC 173-153-060 \(2\) \(a\)](#)

¹⁵⁰ [WAC 173-153-060 \(4\)](#)

¹⁵¹ [WAC 173-153-070 \(12\)](#)

¹⁵² [WAC 173-153-070 \(16\)](#)

¹⁵³ [WAC 173-153-070 \(18\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- g. Provide corrected copies of original application and/or public notices of any amended transfer application.¹⁵⁵
 - h. Forward to Ecology any protests it received including the \$50 protest fee.¹⁵⁶
 - i. To consult with Ecology if your board encounters new, unusual, or controversial issues related to the application.¹⁵⁷
 - j. To consult with Ecology on an application to transfer a water right located in an area subject to an ongoing adjudication prior to taking any action on the application.¹⁵⁸
 - k. To request technical assistance related to a water right transfer application.¹⁵⁹
 - l. Deliver the records of decision and reports of examination to Ecology.¹⁶⁰
 - m. *Within 14 days* after Ecology completes its review of the record of decision, the board must submit any remaining original documents not previously submitted to Ecology.¹⁶¹
 - n. Any comments received by a board *within 30 days after Ecology's final order* regarding the board's record of decision must be forwarded to Ecology *within 5 business days* of the board's receipt of such comments.¹⁶²
 - o. A decision by the board to [withdraw](#) the ROD/ROE from Ecology. All documents submitted with the ROD/ROE are included in the withdrawal.¹⁶³
3. Ecology must communicate with the board:
- a. When Ecology [assigns a state water right change number](#) to an application *within 30 business days* from receipt of the application from the board.¹⁶⁴
 - b. If the applicant requests Ecology process an application declined by a board, Ecology can [request further written explanation](#) from the board regarding the board's reason for declining to process. The board must provide this *within 30 days*.¹⁶⁵
 - c. To provide a [list of parties](#) that have identified themselves to Ecology as interested in the geographic area of the board.¹⁶⁶

¹⁵⁴ [WAC 173-153-080 \(3\)](#)

¹⁵⁵ [WAC 173-153-080 \(5\)](#)

¹⁵⁶ [WAC 173-153-090 \(6\)](#)

¹⁵⁷ [WAC 173-153-110 \(11\)](#)

¹⁵⁸ [WAC 173-153-110 \(12\)](#)

¹⁵⁹ [RCW 90.80.055 \(1\) \(d\)](#) ; [WAC 173-153-120](#)

¹⁶⁰ [WAC 173-153-140 \(1\)](#)

¹⁶¹ [WAC 173-153-140 \(3\)](#)

¹⁶² [WAC 173-153-140 \(4\)](#)

¹⁶³ [WAC 173-153-150 \(9\)](#)

¹⁶⁴ [WAC 173-153-070 \(13\)](#)

¹⁶⁵ [WAC 173-153-070 \(21\)](#)

¹⁶⁶ [WAC 173-153-070 \(23\)](#)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- d. To provide a copy of any [protest received](#) by Ecology to the appropriate board processing the protested application *within five days* of receipt of the protest.¹⁶⁷
- e. Respond to requests by a board for technical assistance.¹⁶⁸
- f. Designate to boards the Ecology regional representative for receipt of each board's records of decision.¹⁶⁹
- g. *Upon receipt* of a record of decision and report of examination, Ecology must acknowledge in writing the [date of receipt](#) to the issuing board.¹⁷⁰
- h. Post a board's record of decision and report of examination on Ecology's Internet site *within five business days*.¹⁷¹
- i. Notify boards if a [30-day extension](#) has been invoked.¹⁷²

Chapter 11 - Reporting Requirements

1. [Report to the legislature](#) regarding activities of boards is completed every even-numbered year.¹⁷³
2. Boards are required to report activities to the water conservancy board coordinator annually.¹⁷⁴
3. Regions are requested to report numbers of RODs processed each month for legislative requests and quarterly reports.

Ken Slattery, Program Manager

Date

¹⁶⁷ [WAC 173-153-090 \(2\)](#)

¹⁶⁸ [RCW 90.80.055 \(1\) \(d\)](#); [WAC 173-153-120](#)

¹⁶⁹ [WAC 173-153-140 \(1\)](#)

¹⁷⁰ [WAC 173-153-150 \(1\)](#)

¹⁷¹ [WAC 173-153-150 \(3\)](#)

¹⁷² [WAC 173-153-150 \(1\)](#)

¹⁷³ [RCW 90.80.150](#); [WAC 173-153-170](#)

¹⁷⁴ [RCW 90.80.150](#); [WAC 173-153-170](#)

Appendices

Checklist for Water Conservancy Board Petitions

County(ies) _____ Lead County _____

Date Received _____ Complete _____ Decision due _____

A petition to create a board submitted to Ecology must include the following pursuant to WAC 173-153-040(8):

_____ 1. A copy of the resolution or petition proposed by _____ (*check list below) calling for the creation of a board to include the following:

_____ **(If initiated by 5 water right holders must include names and addresses of petitioners)**

- a. States **need** for board;
- b. Identifies geographic area within which the board would serve (WRIA, county, multi-county, or multi-WRIA); and
- c. Describes the proposed method(s) for funding operation of the board.

_____ 2. Summary of public testimony from the public hearing(s).

_____ 3. A copy of the resolution adopted by the legislative authority(ies) of the county(ies) to Ecology must include:

- a. Includes items 1 a, b, c, and d listed above.
- b. Identifies the lead county for boards with jurisdiction in more than one county.
- c. Distinguishes establishment of three or five member board.
- d. Any modifications to information included in the initiating petition or resolution; and
- e. A finding that the creation of the board is in the public interest.

_____ 4. Proposed bylaws for the board.

*Resolutions or petitions calling for a water conservancy board may be initiated by:

- A. The legislative authority or authorities of the county or counties which would be served by the board.
- B. The legislative authority of an irrigation district.
- C. The legislative authority of a public utility district that operates a public water system
- D. The legislative authority of a reclamation district
- E. The legislative authority of a city operating a public water system
- F. The legislative authority of a water-sewer district that operates a public water system
- G. The governing body of a cooperative or mutual corporation that operates a public water system serving one hundred or more accounts
- H. A petition signed by 5 or more water rights holders, (including names and addresses) who divert water for use in the geographic area which would be served by the board; or
- I. Any combination of the above.

Comments: _____

Send completed petition package to the Water Conservancy Board Coordinator, Dept. of Ecology, Water Resources Program, 4601 N. Monroe Street, Spokane, WA 99205.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Incomplete-Complete Creation Petition Pkg ltr
Updated: June 23, 2006

<Current date>

«FirstName» «LastName»
<County Name>
«Address»
«City», «StateOrProvince» «PostalCode»

Dear «Dear»:

We received your petition to establish the <Board name> on <Date>. We have examined the petition package and find that it is missing some items. RCW 90.80.030 states the director of the Department of Ecology “shall approve or deny the creation of a board within 45 days after the county legislative authority has submitted all information required. . .” In accordance with RCW 90.80.035, your petition package is found to be:

- Complete. The 45-day review period begins on Date petition received complete.
- Incomplete at this time. Once all items have been received and the petition package is complete you will be notified in writing of the 45-day review period. In accordance with WAC 173-153-040(8), please submit to me the following documentation:
 - A copy of the resolution or petition calling for the creation of a board;
 - Names and addresses of the 5 water right holders petitioning to create the board;
 - A copy of the affidavit of publication for the public notice that appeared in a newspaper of general circulation in the county not less than ten days nor more than thirty days before the date of the public hearing on the proposed creation of the board.
 - The number of commissioners to serve on the board;
 - The proposed geographic area of jurisdiction of the board;
 - Identify the lead county;
 - A summary of public testimony presented during the public hearing(s) conducted by the legislative authority in response to the resolution to create a board including the date of the hearing.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

<Name of County> County

Page 2

<Date>

- A copy of the resolution by the county legislative authority approving the creation of a water conservancy board. The resolution must include a method for funding the proposed water conservancy board.

- A copy of the board's proposed bylaws.

If you have any questions, please feel free to contact me at (509) 329-3421 or email jaca461@ecy.wa.gov.

Sincerely,

Janet L. Carlson
Water Resources Program

cc: Board name Water Conservancy Board
Regional Rep, Ecology Regional office

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Approval of Bd Creation Ltr
Revised: June 23, 2006

<Date>

The Honorable <County Commissioner Name>, Chair
<Name of County> Board of Commissioners
<Address>
<City>, WA <Zip>

Dear Commissioner <Commissioner's last name>:

I am pleased to inform you that the <Board Name> Water Conservancy Board is now approved in accordance with the resolution adopted by the <County name> County Commissioners. Members for the new board may now be appointed for staggered terms of two, three, four, five, and six years. Please contact Janet Carlson of our office at (509) 329-3421 to provide names and addresses of the new board commissioners and discuss possible training dates.

<Special conditions or concerns with the petition package e.g. We have noted that your proposed bylaws refer to several items that are in conflict with Chapter 90.80 RCW as amended in the 2001 session. A copy of this statute is enclosed. I understand that your office has had discussions with Ecology staff regarding your draft bylaws. You may want to consider changing these items to reflect the requirements of the revised statute.

You may now begin operation. Please remember however, that water-right decisions can only be made by the board after the board commissioners have been appointed and completed their training.

We look forward to working with you. If you have any questions about this process please call Janet Carlson at (509) 329-3421 or email at jaca461@ecy.wa.gov.

Sincerely,

Jay Manning
Director

Enclosure

cc: Janet Carlson-Ecology
Supervisor, Ecology Regional Office
Center for Environmental Law and Policy

Petition Checklist to Restructure Number of Members on a Water Conservancy Board

County(ies) _____ Date Received _____

Complete _____ Decision due _____

Restructure from: 3 members 5 members Single Co. Multi-County WRIA Multi-WRIA

Restructure to: 3 members 5 members Single Co. Multi-County WRIA Multi-WRIA

Documents for submission to Ecology:

_____ 1. Resolution by county or counties approving the board, including:

_____ a. States the manner and the **need** for restructuring the board;

_____ b. Identifies geographic jurisdictional area within which the board would serve (WRIA, county, multi-county, or multi-WRIA);

_____ c. Distinguishes establishment of three or five member board.

_____ d. Identifies the lead county for a multi-county or multi-WRIA board.

_____ 2. Summary of public testimony from the hearing.

Comments: _____

Send completed petition package to the Water Conservancy Board Coordinator, Dept. of Ecology, Water Resources Program, 4601 N. Monroe, Spokane, WA 99205. For questions, contact Janet Carlson at (509) 329-3421 or email jaca461@ecy.wa.gov.

(06/23/06)

Petition Checklist to Restructure a Water Conservancy Board Jurisdiction

County(ies) _____ Lead County _____

Date Received _____ Complete _____ Decision due _____

Restructure from: 3 members 5 members Single Co. Multi-County WRIA Multi-WRIA

Restructure to: 3 members 5 members Single Co. Multi-County WRIA Multi-WRIA

A petition to create a board submitted to Ecology must include the following pursuant to RCW 90.80 020, 90.80.035 and WAC 173-153-045:

_____ 1. A copy of the resolution or petition proposed by _____ (*check list below) calling for the creation of a board to include the following:

_____ (If initiated by 5 water right holders must include names and addresses of petitioners)

- a. States manner and **need** for board;
- b. Identifies geographic area within which the board would serve (WRIA, county, multi-county, or multi-WRIA); and
- c. Describes the proposed method(s) for funding operation of the board.

_____ 2. Summary of public testimony from the public hearing(s).

_____ 3. A copy of the resolution adopted by the legislative authority(ies) of the county(ies) to Ecology must include:

- a. Includes items 1 a, b, and c listed above.
- b. Identifies the lead county for boards with jurisdiction in more than one county.
- c. Distinguishes establishment of three or five member board.
- d. Any modifications to information included in the initiating petition or resolution; and
- e. A finding that the creation of the board is in the public interest.

_____ 4. Proposed bylaws for the board.

*Resolutions or petitions calling for a water conservancy board may be initiated by:

- A. The legislative authority or authorities of the county or counties which would be served by the board.
- B. The legislative authority of an irrigation district.
- C. The legislative authority of a public utility district that operates a public water system
- D. The legislative authority of a reclamation district
- E. The legislative authority of a city operating a public water system
- F. The legislative authority of a water-sewer district that operates a public water system
- G. The governing body of a cooperative or mutual corporation that operates a public water system serving one hundred or more accounts
- H. A petition signed by 5 or more water rights holders, (including names and addresses) who divert water for use in the geographic area which would be served by the board; or
- I. Any combination of the above.

Comments: _____

Send completed petition package to the Water Conservancy Board Coordinator, Dept. of Ecology, Water Resources Program, 4601 N. Monroe, Spokane, WA 99205. For questions, contact Janet Carlson at (509) 329-3421 or email jaca461@ecy.wa.gov.

(06/23/06)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Incomplete Restructure Petition Pkg Ltr
Updated: May 17, 2006

<Date>

<Name>

<County Planning or County Commissioners>

<Address>

<City> WA <Zip>

Dear _____ :

County's petition to restructure the water conservancy board from three to five members was received in our office on Date. As stated in WAC 173-153-045 (6), the director will determine whether the restructuring of a board will further the purposes of the law and be in the public interest as described in WAC 173-153-040(9).

The petition package is found to be incomplete at this time. In accordance with WAC 173-153-045 please submit to me the following documentation:

- The manner of restructuring and the need for restructuring the board;
- The number of commissioners to serve on the board;
- The proposed geographic area of jurisdiction of the board;
- Identify the lead county;
- A summary of public testimony presented during the public hearing(s) conducted by the legislative authority in response to the resolution to restructure a board including the date of the hearing.

Upon receipt of all required documentation the director of Ecology will then have a maximum of 45 days to make a final determination. The _____ Water Conservancy Board should continue to operate as a three-member board until final approval from the director is received.

If you have any questions, please feel free to contact me at (360) 407-6274 or email jaca461@ecy.wa.gov.

Sincerely,

Janet L. Carlson
Water Resources Program

cc: _____ Water Conservancy Board
_____, Ecology _____ RO

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Restructure Approval Letter
Updated: May 17, 2006

<Date>

<Co. Commissioner Chair name>
<County Name>County Board of Commissioners
<Address>
<City>, WA <Zip>

Dear Commissioner :

I am pleased to inform you that the <Board Name> County Water Conservancy Board is now approved to expand from a three member board to five member board in accordance with resolution <Resolution #> adopted by the <Name of County>County Commissioners. Commissioners for the new board may now be appointed. Please contact Janet Carlson at Ecology at (509) 329-3421 to provide names and addresses of the new board members and discuss possible training dates.

Please remember that board members can only make water right decisions after they have been appointed and completed their training.

We look forward to working with you. If you have any questions about this process please call Janet Carlson of my staff at (509) 329-3421 or email at jaca461@ecy.wa.gov.

Sincerely,

Jay Manning
Director

cc: Janet Carlson, Ecology
 <Regional Sup>, Ecology
 <Name of Board> Water Conservancy Board
 Center for Environmental Law and Policy

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Term expiration letters
Updated: May 17, 2006

<Date>

County Board of Commissioners

Dear Honorable Commissioners:

Our records indicate that the term of _____, a commissioner on the _____ County Water Conservancy Board, will expire on _____. Please send me written documentation by the county either reappointing _____ to another term or appointing a new commissioner to the vacant position.

When considering the appointment of a board commissioner, please keep in mind:

- RCW 90.80.050 specifies that a county legislative authority must ensure that a water conservancy board has at least one member who is a water right holder and one who is not a water right holder.
- Board commissioners and alternate are each (re)appointed for six-year terms.

New board commissioners must attend at least 32 hours of training provided by Ecology prior to acting on any water right change application. A person the county anticipates appointing to a board may receive the required training prior to formal appointment. New commissioner training sessions generally occur each spring and fall.

Plan ahead! We are currently planning the next session for _____. The spring training sessions tend to be less full than those held in fall. By keeping us informed of your schedule for filling board vacancies we can anticipate training requirements and prevent potential disruption to the work of the board. If you have any questions contact me at (509) 329-3421, email at jaca461@ecy.wa.gov, or by mail at the address above.

Sincerely,

Janet L. Carlson
Water Resources Program

cc: _____ County Water Conservancy Board
_____, Ecology
Center for Environmental Law and Policy

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Training Materials Ltr
Updated: June 23, 2006

March 29, 2004

Dear Water Conservancy Board Commissioner:

Congratulations on your recent appointment to the Water Conservancy Board.

The statute authorizing water conservancy boards, Chapter 90.80 RCW, Water Conservancy Boards, requires that you receive training from the Department of Ecology prior to your taking action on any proposed water right transfer application.

You are scheduled to attend the following training for new board commissioners. We encourage you to attend this training session. If you plan to attend but will miss any part of this scheduled training, please contact me to make arrangements for making up that time.

April 13-16, 2004: The training is to be held from 8 a.m. to 5 p.m. each day at the Ecology Eastern Regional Office, 4601 N. Monroe St. in Spokane. The training will cover general state water law, rules, policies, procedures, generally applicable guidance and issues related to the county boards in attendance. Hydrology and special water resource rules or problems related to specific counties will also be covered. Staff from Ecology regional offices will be in attendance and may make presentations of recent decisions.

Please contact me, phone (509) 329-3421 or email jaca461@ecy.wa.gov if you have any questions. If you can not attend this session, be assured that there will be additional training sessions in the future, possibly other regional offices.

Enclosed are a packet of information for prior reading and driving directions to the training location. Please bring this packet to the training.

Sincerely,

Janet L. Carlson
Water Resources Program

cc: Keith Stoffel, ERO
Bob Barwin, CRO
Dan Swenson, NWRO
Tom Loranger, SWRO

Enclosures

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Training Completion Letter
Updated: May 17, 2006

<Date>

County Board of Commissioners
<Address>
<City>, WA <zip>

SUBJECT: Certification of Completion of Water Conservancy Board Training

Honorable Commissioners:

The Department of Ecology is required by WAC 173-153-050(5) to certify to the Board of County Commissioners that appointees to a water conservancy board have successfully completed the mandatory training provided by Ecology. Over the past six years, 21 boards have been established and over 125 board commissioners and their staff have been successfully trained by Ecology.

Participants in the training have included some county staff members, staff that will be directly assisting water conservancy boards, as well the board commissioners themselves.

Training for the newly appointed <Board Name>Water Conservancy Board commissioners was held at the <Location> in <City> during the week of <Dates>. The following board members successfully completed the required training and examination:

- 1.
- 2.

RCW 90.80.030 and WAC 173-153-050 mandate that each water conservancy board commissioner complete at least 32 hours of instruction prior to taking action on any proposed water right transfer or change. It requires Department of Ecology staff to provide instruction including hydrology, state water law, state water policy, local tribal issues, administrative and judicial case law developments, field practices, evaluation of existing water rights, and applied practical experience working with applications for transfer of water rights. In addition, the board commissioners must demonstrate sufficient mastery of the training curriculum by passing an examination upon completion of the training.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

<County Name> County Board of Commissioners

<Date>

Page 2

The board commissioners listed above are qualified to process water right change applications as outlined in the board's petition approval letter from the Director. If you have any questions regarding this training contact me at jaca461@ecy.wa.gov or (509) 329-3421.

Sincerely,

Janet L. Carlson
Water Resources Program

cc: , CRO
 <Board name> Water Conservancy Board
 Center for Environmental Law and Policy

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Water Conservancy Board Primary Contact Report Updated: April 17, 2006

Board Name	Board Address	Board Phone/Email	Primary Contact Name	Fees
Adams Co.	c/o Adams Co. Conservation District 402 E. Main Ritzville, WA 99169	(509) 659-1553 adamcd@ritzcom.net	Gary DeVore/Joyce McNeil	\$500 per application
Benton Co.	3030 W. Clearwater, Suite 205-A Kennewick WA 99336	(509) 783-1623 dolsenecon@aol.com	Dr. Darryll Olsen	\$250 per application
Chelan Co.	316 Washington Street, Suite 401 Wenatchee, WA 98801 Attn: Lisa de Vera	(509) 888-0461 donphelps@aol.com	Don Phelps	\$1000 fee plus 25%, unused balance refunded
Douglas Co.	P.O. Box 608 Waterville WA 98858	Phone: (509) 745-9160 Fax: (509) 745-8121 ccowling@crcwnet.com	Carol Cowling	*\$300, plus public notice costs; additional fees may be charged
Ferry Co.	639 Kettle River Road Curlew, WA 99118	Phone: (509) 779-4434 Fax: (509) 779-4278 usnwe@televar.com	Patrick Hamilton	\$50 non refundable appl fee; additional \$200 plus public notice costs
Franklin Co.	1620 Road 44 N. Pasco, WA 99301	Phone: (509) 545-8546 x 3 (Nielson) Phone: (509) 547-9751 (Johnson) Fax: (509) 545-5859 Cell: (509) 735-1473 (Nielson) henrycja@aol.com (Johnson)	Henry Johnson Mark Nielson	\$650 per applic with up to two permits; \$650 per permit thereafter
Grant Co.	3953 Airway Drive NE Moses Lake, WA 98837	Phone: (509) 765-8864 or (509) 766-7277 Cell: (509) 750-7589 rsrolfne@atnet.net	Robert Rolfness	\$500; \$100 filing fee + \$400 processing fee
Island Co.	P.O. Box 5000 Coupeville, WA 98239	(360) 678-6268 or wisewater@earthlink.net (Attwater) (360) 387-0680 or res0t6c3@verizon.net (Bach)	Bill Attwater Larry Bach	\$750; \$100 up front, non-refundable
Kittitas Co.	411 North Ruby, Suite 5 Ellensburg, WA 98926	(509) 899-4836 cheryvarnum@yahoo.com	Chery Varnum	\$100 non-refundable for submittal; \$500 acceptance fee
Klickitat Co.	Klickitat Co. Planning Dept. 228 West Main St., MS-CH-17 Goldendale, WA 98620	Phone: (509) 894-4656 Fax: (509) 894-4965 cbeightol@bentonrea.com	Richard Beightol	\$500
Lewis Co.	P.O. Box 1345 Chehalis WA 9853	(360) 978-4358or chrischeney@earthlink.net	Chris Cheney	\$500

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Board Name	Board Address	Board Phone/Email	Primary Contact Name	Fees
Lincoln Co.	P.O. Box 368 Davenport, WA 99122	Phone: (509) 257-2800 Cell: (509) 995-5242 waterboard@co.lincoln.wa.us	Rex Harder	\$500 per application
Mason Co.	1125 N 13th Street, Apt. D13 Shelton, WA 98584	(360) 432-7832 or george@dentaldiscounts.com	George Campbell	\$100 application plus \$800 processing fee
Okanogan Co.	PO Box 1695 Omak, WA 98841	(509) 429-2841 or ocwcb@hotmail.com	Mary Anderson	\$100 application plus \$500 processing fee
Spokane Co.	P.O. Box 13496 Spokane, WA 99213-3496	(509) 922-5127 or djirider@concentric.net	Doug Rider	\$100 application fee; \$400 processing fee
Stevens Co.	PO Box 731 Kettle Falls, WA 99141	(509) 258-4041 or wpmccart@juno.com (Wes McCart)	Wes McCart	\$500 base fee, plus costs
Thurston Co.	P.O. Box 1037 Olympia, WA 98507-1037	(360) 352-5090 or Jerry.Louthain@hdrinc.com	Jerry Louthain	\$1450 per application; \$300 filing fee + \$1150 processing fee
Walla Walla Co.	P.O. Box 1506 Walla Walla WA 99362	Phone: (509) 547-9312 (509) 544-6537 Cell: (509) 531-1813 Fax: (509) 565-9964 alankottwitz@bc.com	Alan Kottwitz	\$500
Whatcom Co.	600 Lakeway Drive Bellingham, WA 98225	Phone: (360) 676-6749 Fax: (360) 738-2451 atkinpj@dshs.gov	Pat Atkinson	\$150 application fee; \$600 processing fee plus any additional costs
Whitman Co.	2892 Belsby Road Cheney, WA 99004	Phone: (509) 235-8581 whitmanwb@earthlink.net	Nancy Belsby	\$300 application fee; \$300 for processing
Yakima Co.	2301 Fruitvale Boulevard Yakima WA 98901	Phone: (509) 574-2650 Fax: (509) 574-2651 sylvia.cervantes@co.yakima.wa.us	Sylvia Cervantes	\$100 non-refundable application fee; \$500 acceptance fee



Washington State
Department of
Ecology

Water Conservancy Board Training

This is to certify that

Jim Throckmorton

In accordance with RCW 90.80.030 and WAC 173-153-050, has completed 32 hours of training from the State Department of Ecology staff and shown sufficient mastery of the training curriculum through examination.

Dates of training: *April 13-16, 2004*

Location of training: *Spokane, Washington*

Fred Rajala, Environmental Specialist

Janet Carlson, Environmental Specialist

Dated

Dated

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Training Status Memo
Updated: May 17, 2006

January 6, 2006

Water Conservancy Board
Bd Address
City, ST, Zip

RE: Training Status of Water Conservancy Board Commissioners

Dear Water Conservancy Board Commissioners:

Pursuant to WAC 173-153-050(6), water conservancy board commissioners must complete a minimum of eight hours of continuing education annually. The year is determined by the appointment date of each commissioner. The rule stipulates that this minimum training requirement must be completed "*before participating in any decision concerning a water right transfer application* being considered by a board." [Emphasis added]

It is therefore essential that commissioners keep their continuing education current, in order to fully participate in water right change decisions made by the board. Ecology's records indicate the status of continuing education for current board commissioner(s) is as follows:

<u>Commissioner name</u>	<u>Appointment date</u>	<u>Next training due by</u>	<u>Hours Needed</u>
--------------------------	-------------------------	-----------------------------	---------------------

Therefore, as of date of letter, Ecology's records indicate **of board commissioners and alternates are currently eligible** to participate in water right transfer decisions.

It is the responsibility of each board commissioner to ensure his/her own eligibility and remain current on continuing education. Ecology will not regulate boards for compliance with the training regulations. However, eligibility of a board commissioner could become a basis for reversal of a record of decision or an appealable action by a third party of Ecology's final administrative order.

Water Conservancy Board

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Training Status

Date

Page 2

Remember that to receive credit for continuing education through any source other than Ecology, board commissioners must complete a Training Credit Request Form (Ecology form #040-104 – can be found on line at <http://www.ecy.wa.gov/biblio/ecy040104.html>) and comply with the procedures described in WAC 173-153-050. The form must be submitted to me with all requested information, including:

- Documentation of training attended such as course agenda or certificate of attendance.
- Short summary of information obtained (in the case of readings or general presentations).
- Description of how the training directly relates to the commissioner's work on the water conservancy board.

If you have any questions, or feel the status of your continuing education information is in error, please contact me at (509) 329-3421 or jaca461@ecy.wa.gov as soon as possible.

Sincerely,

Janet L. Carlson
Water Resources Program

cc: Ecology Regional Office
 County Board of Commissioners
 Center for Environmental Law and Policy

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Ineligibility Notification
Updated: May 17, 2006

MEMORANDUM

<Date>

TO: <Regional Rep Name>, <Regional Office>

FROM: Janet L. Carlson, Water Conservancy Board Coordinator

SUBJECT: Ineligibility status on the Board name Water Conservancy Board

Ecology's records indicate that as of <Date> <Name of WCB Commissioner> is ineligible to participate in water right change decisions on the Board name Water Conservancy Board. Pursuant to WAC 173-153-050(6), water conservancy board commissioners must complete a minimum of eight hours of continuing education annually. The year is determined by the commissioner's appointment date to the board. The rule stipulates that this minimum training requirement must be completed "*before participating in any decision concerning a water right transfer application* being considered by a board." [Emphasis added] It is therefore essential that commissioners keep their continuing education current, in order to fully participate in all board activities.

Ecology's records indicate <Name of WCB Commissioner> appointment date as <date>. <Name of WCB Commissioner> required _____ hours continuing education for the year following _____ to remain eligible to participate in water right change decisions. <Name of WCB Commissioner> will also need an additional _____ hours in the year after _____ to remain eligible.

To receive training credit board commissioners must submit a complete training credit request form (found on line at <http://www.ecy.wa.gov/biblio/ecy040104.html>) and follow the procedure described in WAC 173-153-050(11) through (20).

It is the responsibility of each board commissioner to ensure his/her own eligibility and remain current on continuing education. Ecology will not regulate boards for compliance with the training regulations. However, eligibility of a board commissioner could become a basis for reversal of a record of decision or an appealable action by a third party of Ecology's final administrative order.

If the region or the board feels this documentation is in error or have questions about eligibility, please contact me at (509) 329-3421 or jaca461@ecy.wa.gov.

cc: Water Conservancy Board
<Individual commissioner or alternates name/address>
County Board of Commissioners
Center for Environmental Law and Policy

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Incomplete CE Documentation Letter
Updated: May 16, 2006

<Current date>

<Name>

<Address>

<City, State, Zip>

Dear <Name>:

I am returning your request for training credit, which I received by mail, fax, email, etc. on date. You are requesting training credit for activity. In accordance with WAC 173-153-050(7), the request must be reported on Ecology's Training Credit Request Form and approved by Ecology. However, your request cannot be processed at this time. In order for your request to be processed, please provide the following:

- A written summary of the reading, presentation, etc. accomplished must be included with the training credit request form.
- Certification of your attendance with a copy of the brochure, receipt or other documentation.
- Credit for training cannot be documented prior to your participation in the activity. Please resubmit the completed training credit request form with verification of your attendance.
- The request must be submitted with a Training Credit Request Form, form number 040-104.

The purpose of the training credit request form is to document training received. Please resubmit the completed training credit request form with the requested information. Your request will be considered at that time and you will be notified by letter of the hours documented in your file.

If you have questions, please feel free to contact me at either (509) 329-3421 or jaca461@ecy.wa.gov.

Sincerely,

Janet L. Carlson
Water Resources

cc: Water Conservancy Board
, Ecology RO

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Continuing Education Confirmation Letter
Updated: May 16, 2006

<Date>

<Name>

<Address>

<City, State, Zip>

Dear <Name>:

Your training credit request form has been received. You have requested continuing education credit for No. of hours hours acquired on Date(s) of training for (identify activity). In accordance with WAC 173-153-050, "After completing one year of service on a water conservancy board, each following year prior to the anniversary of their appointment to the board, commissioners must complete an additional eight hours of continuing education provided or approved by ecology. Each commissioner shall complete the minimum continuing education requirement before participating in any decision concerning a water right transfer application being considered by a board."

The Department of Ecology will track the eight hours required annually for each board commissioner. Any additional continuing education hours reported within the year will be documented and kept on file at the Department of Ecology. A training credit request form must be completed in order to receive credit for training offered by entities other than Ecology.

You have been credited hours toward the annual eight-hour continuing education requirement for the current appointment year. You will need an additional hours to fulfill this requirement.

According to our records eight hours continuing education needs to be completed within the 12 months prior to date.

If you have any questions about training contact me at (509) 329-3421 or jaca461@ecy.wa.gov.

Sincerely,

Janet L. Carlson
Water Resources Program

cc: Water Conservancy Board
 Ecology Regional Office
 County Board of Commissioners
 Center for Environmental Law and Policy

2006 Report to Legislature
Water Conservancy Board
 November 1, 2005 through October 31, 2006

Water Conservancy Board Information			
Board name		Date board established	
Board address/ phone/email	(Name of Location) (Address) (City), (ST) (Zip) (Phone) and/or (email)		
Board commissioners	, Chair , Member , Member , Member , Member , Alternate Alternate	Term Expiration Date	
Primary board contact	(Name), (Title)		
Changes in membership	Bd Member Name	Address	Phone/Cell/Fax/Email
	New <input type="checkbox"/> Resigned <input type="checkbox"/>		
	New <input type="checkbox"/> Resigned <input type="checkbox"/>		
	New <input type="checkbox"/> Resigned <input type="checkbox"/>		
Water Conservancy Board Operations			
Regular meeting schedule			
Regular meeting location			
Current fee for processing			Has this changed from last year? Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
Litigation WCB has been involved in			
Property owned by WCB			
Number & type staff/ volunteer assistance			
Do you maintain a water right transfer information exchange of interested buyers, sellers and/or lessors of water rights: <input type="checkbox"/> yes <input type="checkbox"/> no			
Additional comments: You may attach additional pages if desired			

¹ For water right transfers between counties

Application Information between 11/01/05 to 10/31/06		
Estimated pre-application consultations or contacts	With board	
	With individual board commissioner	
Total applications accepted by the board	Conveyed from Ecology	
	Filed originally with WCB	
	Total applications accepted 11/01/05 to 10/31/06	
Total applications withdrawn or declined after acceptance by the board	Withdrawn by applicant from board	
	Board declined to process	
Applications for	Ground water transfers	
	Surface water transfers	
	Surface to ground or ground to surface water	
Proposing transfer related to:	Certificates	
	Water right claims	
	Court claims or other documents	
	Trust water	
Hearings in other counties ¹		
Applications by Water Resource Inventory Areas (WRIAs)		
WRIA Number	WRIA Name	Number Filed
Records of Decisions by the Board		
Approved		
Denied		
Total Decisions	(sum of all RODs)	
Withdrawn from Ecology		
Remand/returned without action back to board		
Appealed to PCHB		

¹ For water right transfers between counties

(Board Name)
WATER CONSERVANCY BOARD
Application for Change/Transfer
Record of Decision

For Ecology Use Only
Received: <i>Date Stamp</i>
Reviewed by: _____ Date Reviewed: _____

Applicant: (applicant's name)

Application Number: (application number)

This record of decision was made by a majority of the board at an open public meeting of the (Board Name) Water Conservancy Board held on (date meeting was held).

Approval:

The (board name) Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on (date report of exam was signed) and submits this record of decision and report of examination to the Department of Ecology for final review.

Denial:

The (board name) Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on (date report of exam was signed) and submits this record of decision to the Department of Ecology for final review.

Signed:

	Date: _____	Approve <input type="checkbox"/>
(Name), Chair		Deny <input type="checkbox"/>
(Board Name) Water Conservancy Board		Abstain <input type="checkbox"/>
		Recuse <input type="checkbox"/>
	Date: _____	Approve <input type="checkbox"/>
(Name), (Title)		Deny <input type="checkbox"/>
(Board Name) Water Conservancy Board		Abstain <input type="checkbox"/>
		Recuse <input type="checkbox"/>
	Date: _____	Approve <input type="checkbox"/>
(Name), (Title)		Deny <input type="checkbox"/>
(Board Name) Water Conservancy Board		Abstain <input type="checkbox"/>
		Recuse <input type="checkbox"/>
	Date: _____	Approve <input type="checkbox"/>
(Name), (Title)		Deny <input type="checkbox"/>
(Board Name) Water Conservancy Board	Recuse	Abstain <input type="checkbox"/>
		<input type="checkbox"/>
	Date: _____	Approve <input type="checkbox"/>
(Name), (Title)		Deny <input type="checkbox"/>
(Board Name) Water Conservancy Board	Recuse	Abstain <input type="checkbox"/>
		<input type="checkbox"/>

Mailed to the Department of Ecology (regional office name) Regional Office of Ecology, via certified mail, and other interested parties on (date mailed).

Continued

DESCRIPTION OF PROPOSED WORKS

<Description of water diversion/withdrawal, conveyance, and distribution system>

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: <At least 75 days after Board's ROD issuance>	COMPLETE PROJECT BY THIS DATE:	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE:
--	--------------------------------	---

REPORT

NOTE TO AUTHOR: This form reflects the minimum regulatory requirements as required in WAC 173-153-130(6). In accordance with WAC 173-153-130(5), "It is the responsibility of the water conservancy board to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." **Completion solely of the minimum regulatory requirements may not constitute a fully documented decision.**

BACKGROUND [See WAC 173-153-130(6)(a)]

On <Month, day, year> <name of applicant> of <city>, <state> filed an application for change <to do what e.g., POU, POD, POW, etc> under <Water right number, e.g., certificate, permit, claim , superseding document #, cert of change #>. The application was accepted at an open public meeting on <Month, day, year>, and the board assigned application number <XXXX-YR-##>.

Attributes of the water right as currently documented

Name on certificate, claim, permit:

Water right document number: <e.g., cert #, claim #, permit #, superseding document #>

As modified by certificate of change number:

Priority date, first use: <Date of priority or claimed date water was originally first put to beneficial use>

Water quantities: Qi: <Instant. qty> Qa: <Annual qty> acre ft./ year

Source: <well, river, etc.>

Point of diversion/withdrawal:<Distance from ¼¼, Section, Township, Range EWM>

Purpose of use: <Use and number of acres if irrigation>

Period of use:

Place of use:

Existing provisions: <family farm act, interruptable, etc.>

Tentative determination of the water right

The tentative determination is provided on the front page of this report.

History of water use

<Describe the historical water use information that was considered by the board>

Previous changes

<Describe any previous change decisions associated with the water right>

SEPA

The board has reviewed the proposed project in its entirety. <Provide a detailed explanation of how the board complied with the State Environmental Policy Act>

Other

<Provide any other pertinent information relative to the background of this water right>

COMMENT AND PROTESTS [See WAC 173-153-130(6)(b)]

Public notice of the application was given in the <name of publication(s)> on <Dates published>. Protest period ended on <end date of protest period>.

There were < # or no> protests received during the 30 day protest period. In addition, <no or #> oral and written comments were received at an open public meeting of the board or other means as designated by the board.

Continued

Date: <Date protest/comment received>

This was recognized by the board as a Protest Comment

Name/address of protestor/commenter: <name/address of protestor/commenter>

Issue: <describe issues raised>

Board's analysis: <board's response to the protest/comment>

NOTE to author: Repeat this table as necessary to describe each protest or comment

Other

<Provide any other pertinent information relative to the comments and protests received>

INVESTIGATION [See WAC 173-153-130(6)(c)]

The following information was obtained from a site inspection conducted by <person(s)> on <date of field exam>, technical reports, research of department records, <list other references, if any> and conversations with the applicant and/or other interested parties.

Proposed project plans and specifications

<Describe proposed use of water to include # of connections, method of irrigation, type of crop, commercial use, etc.>, Also describe any issues related to development, such as the proposed development schedule and an analysis of the effect of the proposed transfer on other water rights, pending change applications & instream flows established under state law>

Other water rights appurtenant to the property (if applicable)

<Describe any other water rights or other water uses associated with both the current and proposed place of use and an explanation of how those other rights or uses will be exercised in conjunction with the right proposed to be transferred>

Public Interest (groundwater only)

The proposed transfer is subject to RCW 90.44.100 and therefore, cannot be detrimental to the public interest, including impacts on any watershed planning activities. <Provide an analysis of the transfer as to whether it is detrimental to the public interest, including impacts on any watershed planning activity. Public interest is not considered if the proposed water right is authorized under RCW 90.03.380 exclusively>

Tentative Determination

In order to make a water right change decision, the Board must make a tentative determination on the validity and extent of the right. The Board has made the tentative determination as displayed upon the first page of this report. There are several circumstances that can cause the board's tentative determination to differ from the stated extent of the water right within water right documentation. Water right documents attempt to define a maximum limitation to a water right, rather than the actual extent to which a water right has been developed and maintained through historic beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or in part, not put to a beneficial use for five consecutive years since 1967 may be subject to relinquishment under Chapter 90.14.130 through 90.14.180 RCW. Water rights may additionally be lost through abandonment. The Board's tentative determination was based upon the following findings: <Describe any information indicating that an existing water right or portion of a water right has been relinquished or abandoned due to nonuse and the basis for the determination>

Geologic, Hydrogeologic, or other scientific investigations (if applicable)

<Describe the results of any geologic, hydrogeologic, or other scientific investigations that were considered by the board and how this information contributed to the board's conclusions>

Other

<Provide any other pertinent information relative to the investigation of this application>

CONCLUSIONS [See WAC 173-153-130(6)(d)]

Tentative determination (validity and extent of the right)

<Describe whether, and to what extent, a valid water right exists>

Relinquishment or abandonment concerns

<Describe any relinquishment or abandonment of the water right associated with the water right transfer application as discussed in the investigation section of this report>

Continued

Hydraulic analysis

<Describe the result, as adopted by the board, of any hydraulic analysis done related to the proposed water right transfer>

Consideration of comments and protests

<Discuss the board's conclusions of issues raised by any comments and protests received>

Impairment

<Describe how or if the transfer proposal will impair existing rights of others>

Public Interest

<If the proposed transfer is authorized pursuant to RCW 90.44.100, describe whether it is detrimental to the public interest. Public interest shall not be considered if the proposed transfer is authorized pursuant to RCW 90.03.380 exclusively>

Other

The board also considered the previous provisions associated with the water right as identified in the background section of this report when making its decision. <Provide any other pertinent information relative to the board's conclusions>

DECISION [See WAC 173-153-130(6)(e)]

<Provide a complete description of the board's decision, fully and comprehensively addressing the entire application proposal>

<Provide any other pertinent information relative to the board's decision>

PROVISIONS [See WAC 173-153-130(6)(f)]

Conditions and limitations

<Identify any conditions and limitations recommended as part of an approved transfer, and/or any other corrective action necessary to maintain the water use in compliance with state laws and regulations>

Mitigation (if applicable)

<Describe any requirement to mitigate adverse effects of the project. Mitigation may be proposed by the applicant or the board and be required in the board's decision>

Construction Schedule

<Provide a schedule for development and completion of the water right transfer, if approved in part or in whole, that includes a definite date for completion of the transfer and application of the water to an authorized beneficial use>

Other

<Provide any other pertinent information relative to provisions>

Signed at City, Washington

This Date day of Month, Year

Board Representative's Name, Board Representative
Board Name Water Conservancy Board

If you have special accommodation needs or require this form in alternate format, please contact 360-407-6607 (Voice) or 711 (TTY) or 1-800-833-6388 (TTY).

Ecology is an equal opportunity employer

WATER CONSERVANCY BOARD TRAINING CREDIT REQUEST FORM

This information will be used to approve and document other than Ecology sponsored training.

Board Member Information			
Name	Appointment date	Board name	Phone
Training Activity Information			
Title of training activity		Location: City State	
Training activity date(s)		Total hours	
Content/Description: (Attach course documentation if available or summary of activity)			
How does this training relate to your work on the water conservancy board?			
Sponsor of activity: <input type="checkbox"/> Other State Agency (Please list agency): _____ <input type="checkbox"/> Federal Government (Please list agency): _____ <input type="checkbox"/> Educational Institute (Please list agency): _____ <input type="checkbox"/> Other: _____			
Instructor type: <input type="checkbox"/> Contractor Instructor <input type="checkbox"/> Ecology Employee <input type="checkbox"/> Federal Employee <input type="checkbox"/> Other/Unknown <input type="checkbox"/> Author of Reading Material <input type="checkbox"/> State Employee <input type="checkbox"/> College Instructor			
Instructor's or Author's Name (if known):			
Signatures			
Board Member signature			Date
For Ecology Use			
Ecology Approval (approved if signed)		Number of training hours credited	Date

**Send completed form to
Dept. of Ecology, Water Resources Program
Water Conservancy Board Coordinator
4601 N. Monroe St., Spokane, WA 99205**

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Date

To: Department of Ecology

From: (Board Name) Water Conservancy Board

Re: Withdrawal of Record of Decision and Report of Examination

A meeting of the (Board Name Water Conservancy Board) was conducted in compliance with Chapter 42.30 RCW at (location of meeting) on (date).

The board had previously issued a Record of Decision and Report of Examination on (date decision issued) in the matter of Application for Change/Transfer No. (application number) filed by (applicant name). At the meeting mentioned above and by a majority vote, the board withdrew the referenced issued Record of Decision and Report of Examination for the following reason(s):

(Reasons for withdrawing)

The withdrawal of the referenced Record of Decision and Report of Examination is effective as of the adjournment of the meeting of the board during which it was adopted. Upon Ecology concurrence to this withdrawal, the Ecology review period provided by RCW 90.80.080 is terminated without prejudice for the referenced application for change/transfer.

The applicant (did or did not) participate in the meeting and (concur or does not concur) with the withdrawal of the board's previous decision.

The board adopts the following plan for action on the application (*check one*):

- The board intends to revise and resubmit for Ecology review the record of decision and report of examination for the subject application.
- The board will take no further action on the subject application and has informed the applicant that the application may be filed with Ecology for processing.

Information relevant to the board's withdrawal action and a record of the Board's vote in this matter are attached.



(Board Name)
WATER CONSERVANCY BOARD
Application for Change/Transfer
Decision to Withdraw a Record of Decision
and Report of Examination

For Ecology Use Only

Received: _____

Date Stamp

Reviewed by: _____

Date Reviewed: _____

Applicant: (applicant's name)

Application Number: (application number)

The (Board name) Water Conservancy Board hereby **withdraws** the Record of Decision and the Report of Examination for the entitled water right transfer issued on (date Record of Decision was signed) in accordance with the accompanying resolution of the board and submits this resolution to the Department of Ecology.

It is understood that with the concurrence of Ecology to this withdrawal, that the decision review period provided by RCW 90.80.080 for Ecology review of the previous decision of the board is terminated without prejudice. No board decision regarding the titled application for change/transfer is before Ecology for review.

Signed:

_____ (Name), Chair (Board Name) Water Conservancy Board	Date: _____	Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other <input type="checkbox"/>
_____ (Name), (Title) (Board Name) Water Conservancy Board	Date: _____	Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other <input type="checkbox"/>
_____ (Name), (Title) (Board Name) Water Conservancy Board	Date: _____	Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other <input type="checkbox"/>
_____ (Name), (Title) (Board Name) Water Conservancy Board	Date: _____	Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other <input type="checkbox"/>
_____ (Name), (Title) (Board Name) Water Conservancy Board	Date: _____	Approve <input type="checkbox"/> Deny <input type="checkbox"/> Abstain <input type="checkbox"/> Recuse <input type="checkbox"/> Other <input type="checkbox"/>

Mailed to the Department of Ecology (regional office name) Regional Office of Ecology, via certified mail, and other interested parties on (date mailed).

If you have special accommodation needs or require this form in alternate format, please contact 360-407-6607 (Voice) or 711 (TTY) or 1-800-833-6388 (TTY).

Ecology is an equal opportunity employer.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Application Acceptance Memo
Updated May 16, 2006

MEMORANDUM

February 28, 2007

TO: Dept. of Ecology (Regional Office) Regional Office

FROM: (Board Name) Water Conservancy Board

RE: New Change/Transfer Application for (Name of Applicant),
Application number (board assigned application number per WAC 173-153-070(11))

In accordance with WAC 173-153-070, the above-referenced application for change has been accepted for processing by the Board.

1. We are forwarding the following documents:
 - The referenced application for change including all maps and related documentation accepted for processing by our board on (date of acceptance). (Forward to Ecology within 5 working days of the board's acceptance.)
2. Regarding the enclosed application, we would like to request from Ecology the following information:
 - A copy of the water right file related to the water right transfer application identified above as stated in WAC 173-153-060(2).
 - Assignment of a state water right change application number as stated in 173-153-070 (13).
 - All pertinent information regarding this application.
3. Duplicate applications have been filed with the water conservancy board or through the Dept. of Ecology. The applications are:
 - a. Name: (name of applicant) Accept
Application Date: _____ Application No.: (if any) Reject
Application related to: Permit No.: _____ Cert No.: _____ Claim No.: _____
 - b. Name: (name of applicant) Accept
Application Date: _____ Application No.: (if any) Reject
Application related to: Permit No.: _____ Cert No.: _____ Claim No.: _____

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Number assign ltr
Updated: May 30, 2006

February 28, 2007

Board Contact Name
(County Name) Water Conservancy Board
Address
City, ST Zip

RE: Receipt of Water Right Change Application and Assignment of State Water Right
Change Application Number

Dear _____ :

In accordance with WAC 173-153-070(12), our office received the following application for
change on (date of receipt).

Applicant Name: _____

This application relates to: Permit _____ Cert _____ Claim No.: _____

The following action has been taken:

- Ecology has opened a file for the above-referenced application. The application will not be considered as part of Ecology's active workload while the application is being processed by the board. The agency has assigned this application the following state water right change application number (WR change app number). Be sure this number is documented within the file for reference.
- As a courtesy, Ecology has noticed the following omissions from the application. This information will be necessary for Ecology's ultimate review upon receipt of the board's record of decision.
 - Maps
 - Related documents (list needed documents)
 - Complete sections _____ of application form.
- The application is being returned to the board for the following reason.

Contact _____ at _____ or email _____ if you have any questions.

Sincerely,

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Decline to Process Ltr
Updated: May 16, 2006

(Board Name) Water Conservancy Board
(Board Address)
(City, ST, Zip)

(Date)

(Name of Applicant)
(Applicant's Address)
(City, ST, Zip)

Subject: Application Number (App Number)

Dear (Name of Applicant):

In accordance with RCW 90.80.070(18) and (19), the (Board Name) voted to decline to process your water right transfer application at an open public meeting of the board held on (date of meeting). We are returning all application documents to you. The reason for declining is:

Should you choose to pursue your water right transfer proposal, you must make a written request to the Department of Ecology at the following regional office:

Central Regional Office
Water Resources Program
15 W. Yakima Avenue, Suite 200
Yakima, WA 98902-3401

Eastern Regional Office
Water Resources Program
4601 N. Monroe, Suite 202
Spokane, WA 99205-1295

Northwest Regional Office
Water Resources Program
3190 - 160th Avenue SE
Bellevue, WA 98008-5452

Southwest Regional Office
Water Resources Program
P.O. Box 47775
Olympia, WA 98504-7775

Sincerely,

(Name)
(Board Name) Water Conservancy Board

cc: Ecology Regional Office

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Continue Processing Inquiry Letter
Updated: May 16, 2006

February 28, 2007

(Applicant Name)
(Address)
(City, ST Zip)

RE: Request for Confirmation to Continue Processing
Application (application # assigned by board)

Dear _____ :

On (date notice received from board) our office received notification that the (Board Name) Water Conservancy Board has declined to process the following water right transfer application:

Applicant name:
Board application number:
Ecology assigned control number:

Upon declining to process an application pursuant to RCW 90.80.070(1), a board must return an application to the applicant and inform the applicant that the application may be filed with Ecology. In accordance with WAC 173-153-070(21), the applicant is required to file a written request that Ecology process the application.

Please inform this office in writing *within 30 days* of the date of this letter if you would like Ecology to continue processing the application identified above. An application filed with a board is also filed with Ecology and considered "dual-filed" pursuant to WAC 173-153-070(18). If Ecology does not receive a written response to this letter at the address above within 30 days, the application on file with Ecology will be rejected.

If you have any questions please contact (Staff name) at (phone and email address).

Sincerely,

Water Resources Program

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Additional Information Request Ltr
Updated: May 16, 2006

February 28, 2007

(County Name) Water Conservancy Board
(Address)
City, ST Zip

RE: Additional information relating to water right change application
(Application Number), (Applicant Name)

Dear :

Our office has received a request from the applicant indicated above to process the referenced application. Our records indicate that your water conservancy board declined to process this application and returned the application to the applicant.

In an effort to better serve the applicant, and in accordance with WAC 173-153-070(21), we request further written clarification regarding the basis of the board's decision not to process or finish processing the application. Please provide the clarification to this office no later than (within 30 days of this request).

Sincerely,

Water Resources Program

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Return w/o action ltr
Updated: June 1, 2006

<Date>

<Bd Name> Water Conservancy Board
<address>
<City, ST, Zip>

RE: Return without action
Change/Transfer Application for (Name of Applicant),
Application number (board assigned application number per WAC 173-153-070(11))

Dear Commissioners:

The above-referenced record of decision issued by the <bd name> Water Conservancy Board on (date issued) and received in this office on (date received) is being returned to you without action as provided in WAC 173-153-150(5)(b). Ecology is returning this record of decision until such time that the board can provide a majority vote of the members of the board. The majority vote of a board must consist of a minimum of 3 of 5 eligible and qualified commissioners of a five-member board, or 2 of 3 eligible and qualified commissioners of a three-member board.

For purposes of this explanatory letter, the term “eligible” refers to commissioners who have fulfilled all training and continuing education requirements and maintained the requirements in good standing. The term “qualified” refers to eligible commissioners whereby conflict of interest issues, as defined in RCW 90.80.120, have not been triggered requiring recusal from decision making.

The referenced record of decision is being returned for the following reason:

- In accordance with RCW 90.80.040 and WAC 173-153-050 (1) and (5), a water conservancy board commissioner must complete all training requirements before participating in any decision concerning a water right transfer application being considered by a board. According to our records (name of commissioner) is ineligible to participate in this record of decision as of (date of ineligibility)
- In accordance with RCW 90.80.070 (4) and (5) and WAC 173-153-130 a record of decision must be adopted by a majority vote of the board as stated above. The (Name of Board) Water Conservancy Board is currently identified by the (County Name) County Commissioners as a (3 or 5)-member board requiring a minimum vote by at least (2 or 3) eligible and qualified commissioners. The enclosed record of decision was submitted with only (# of votes) of the required (2 or 3) votes.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Water Conservancy Board

<Date>

Page 2

- In accordance with RCW 90.80.070(6) when alternates are serving as commissioners on a board, a majority vote of the board must include at least one commissioner appointed under the provisions of RCW 90.80.050(1). A majority vote of the board is required per RCW 90.80.070 when adopting a record of decision. The record of decision on the application identified above was adopted without the participation of a board commissioner.

The record of decision may be resubmitted by the board to Ecology once an eligible and qualified majority of the board is available to participate in the decision.

Sincerely,

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Protest Receipt Ltr
Updated: May 30, 2006

February 28, 2007

(County Name) Water Conservancy Board
(Address)
(City, ST Zip

RE: Protest received regarding (Application Number), (Applicant Name)

Our office received a protest of the application referenced above on (date protest received). In accordance with WAC 173-153-090 (2) our office is forwarding this protest within five days of receipt for the board's consideration. We have determined that:

- This protest is valid in accordance with WAC 173-153-090(7) and was received with the statutory protest fee within the prescribed 30-day protest filing period pursuant to WAC 508-12-170.
- This protest is not considered a valid protest pursuant to WAC 173-153-090(7), because it was received without the statutory protest fee pursuant to RCW 90.03.470(11) or it was not received within the prescribed 30-day protest filing period pursuant to WAC 508-12-170.

Sincerely,

(Name)
Water Resources Program

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

ROD Receipt Ltr.
Update: May 16, 2006

February 28, 2007

(County Name) Water Conservancy Board
(Address)
(City, ST Zip)

RE: Receipt of Record of Decision for
(Application Number), (Applicant Name)

Dear :

In accordance with RCW 90.80.080 and WAC 173-153-150, our office received the record of decision referenced above on (date of receipt). The department will review the record of decision and affirm, reverse, modify, or remand the action of the board by (45 days from receipt of record of decision).

However, the director may invoke, or the board or applicant may request, a 30-day extension beyond the date listed above as allowed under RCW 90.80.080(4). The department will notify all necessary parties should an extension be required.

If Ecology does not act by the date listed above, the water conservancy board must notify Ecology, the applicant, and any parties that have expressed interest about the application of Ecology's failure to act [WAC 173-153-150(11)]. With concurrence from Ecology, the board's decision becomes final.

Sincerely,

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Administrative Order on ROD - Affirm
Revised: May 16, 2006

(Date)

(Applicant Name)
(Address)
(City, ST Zip)

Dear (Applicant Name):

In accordance with RCW 90.80.080 the Department of Ecology has reviewed the Record of Decision (ROD), Report of Examination (ROE), and all comments, protests, objections and other relevant information submitted by the (Board Name) Water Conservancy Board for the above referenced application for change.

The Department of Ecology **AFFIRMS** the decision of the board.

You have the right to appeal this *decision* to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology, within thirty (30) days of the date of your receipt of this document.

To appeal this action or decision, your notice of appeal must contain a copy of the Ecology order, action or decision you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:

Department of Ecology
, Section Manager
<Address>
<City, State, Zip>

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

DATED this day of ____20 at .

Section Manager
Water Resources Program
Regional Office

cc: Janet Carlson, Ecology ERO
Water Conservancy Board
(Other tribes, interested parties)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Modify - Administrative Order on ROD
 Revised: October 13, 2006

(Date)

(Applicant Name)
 (Address)
 (City, ST Zip)

Dear (Applicant Name):

In accordance with RCW 90.80.080 the Department of Ecology has reviewed the Record of Decision (ROD), Report of Examination (ROE), and all comments, protests, objections and other relevant information submitted by the (Board Name) Water Conservancy Board for the above referenced application for change.

The Department of Ecology has **modified** the decision of the Board and the proposed change/transfer of water right is **approved** under the following conditions:

Summary of Ecology's final order

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE <Describe the type(s) and period(s) of use>				
SOURCE			TRIBUTARY OF (IF SURFACE WATER)				
AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD							
<Type detailed legal description as approved by the board>							
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,		

[Modification should be justified by the board record, subsequent docs received from the board, or data agreed upon by all parties. State which parts of the board's decision was modified. Refer to WAC 173-153-150(6).]

You have the right to appeal this *decision* to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology, within thirty (30) days of the date of your receipt of this document.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

To appeal this action or decision, your notice of appeal must contain a copy of the Ecology order, action or decision you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:

Department of Ecology
, Section Manager
<Address>
<City, State, Zip>

DATED this day of ____20 at .

Section Manager
Water Resources Program
Regional Office

cc: Janet Carlson, Ecology ERO
Water Conservancy Board
(Other tribes, interested parties)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Reverse - Administrative Order on ROD
Revised: May 30, 2006

(Date)

(Applicant Name)

(Address)

(City, ST Zip)

Dear (Applicant Name):

In accordance with RCW 90.80.080 the Department of Ecology has reviewed the Record of Decision (ROD), Report of Examination (ROE), and all comments, protests, objections and other relevant information submitted by the (Board Name) Water Conservancy Board for the above referenced application for change.

The Department of Ecology **REVERSES** the decision of the board as follows:

[State detailed reason the board's decision was reversed. Refer to WAC 173-153-150(6).]

You have the right to appeal this *decision* to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology, within thirty (30) days of the date of your receipt of this document.

To appeal this action or decision, your notice of appeal must contain a copy of the Ecology order, action or decision you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:

Department of Ecology
, Section Manager
<Address>
<City, State, Zip>

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

DATED this day of ____20 at .

Section Manager
Water Resources Program
Regional Office

cc: Janet Carlson, Ecology ERO
Water Conservancy Board
(Other tribes, interested parties)

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Sample Public Notice
Updated: 7/25/05

Note to preparer: This example of a public notice is provided to assist the board. Responsibility for the accuracy of the public notice rests solely with the board and the applicant. The "F11" key may be used to move from field to field for information entry.

**BEFORE THE (BOARD NAME)
WATER CONSERVANCY BOARD
(CITY LOCATION, WRIA, OR COUNTY), WASHINGTON**

Notice of Application to Change *(identify the transfers proposed)* under *(identify the right being transferred)*

TAKE NOTICE: That on *(date application was filed)*, *(applicant's name)* of *(city and state)* filed application number *(enter board assigned application number)* with the *(name of board)* Water Conservancy Board to change the *(describe proposed transfers)* under *(identify right being transferred)*.

That said right, under priority date of *(date of priority)*, authorizes the withdrawal or diversion of *(enter instantaneous and annual quantities)* per year from a *(name water source)* located within *(identify point of diversion/withdrawal)*. That said right authorizes water to be used for *(identify purposes of use)* from *(identify period(s) of use)* within *(identify the place of use)*.

That the applicant proposes to *(describe the transfers proposed, including any place, point, purpose, number of water uses, and associated water quantities)*

Any protests or objections to the approval of this application may be filed with the Department of Ecology and must include a detailed statement of the basis for objections; protests must be accompanied by a fifty dollar (\$50) recording fee and filed with the Department of Ecology, *(address of appropriate Region Office)* within thirty (30) days from *(last date of publication)*.

Any interested party may submit comments, objections, and other information to the board regarding this application. The comments and information may be submitted in writing or verbally at any public meeting of the board held to discuss or decide on the application. This application will be on the board agenda during its regular meetings to be held on *(indicate any scheduled meetings to discuss the application. NOTE: this notice does not constitute notice of a meeting for the purposes of the Open Public Meetings Act, RCW 42.30.)*. Additionally, the Water Conservancy Board, may receive written comments or information through *(date)* at its offices located at *(identify contact information, office location, mailing address, etc.)*.

Note to publisher: Publish 2 times, once each week, for two weeks.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Interested Parties Letter
Updated: May 16, 2006

February 28, 2007

(County Name) Water Conservancy Board
(Address)
City, ST Zip

RE: Interested Parties List

Dear :

In accordance with WAC 173-153-070(23) water conservancy boards must ensure that copies of the applications accepted by them for processing are provided to interested parties in compliance with existing laws. Ecology is required to provide your board with a list of parties which have identified themselves as interested in the geographic area of the board.

Copies of applications should also be provided to additional parties that indicate an interest in receiving copies of applications from your board.

Sincerely,

Water Resources Program

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

30-day Ext. Ltr.
Updated: May 30, 2006

February 28, 2007

(Applicant Name)
(Address)
(City, ST Zip)

RE: Thirty-day Extension Confirmation
(Application Number), (Applicant Name)

Dear _____ :

In accordance with RCW 90.80.080(4), a 30-day extension for review of the record of decision referenced above has been invoked by the director of Ecology. The extension was

- Extended by the director of Ecology;
- Requested by the applicant;
- Requested by the (Board name) Water Conservancy Board.

This memo confirms that the final review period is extended to (date of final review). This requires the department to review the record of decision and affirm, reverse, modify, or remand the action of the board by this date.

Pursuant to WAC 173-153-150(11), if Ecology fails to act by the date listed above, and the water conservancy board concludes that the time allowed for Ecology to issue its order has lapsed, it is the responsibility of the board to notify Ecology, the applicant, and any parties that have expressed interest to the board that the time has lapsed.

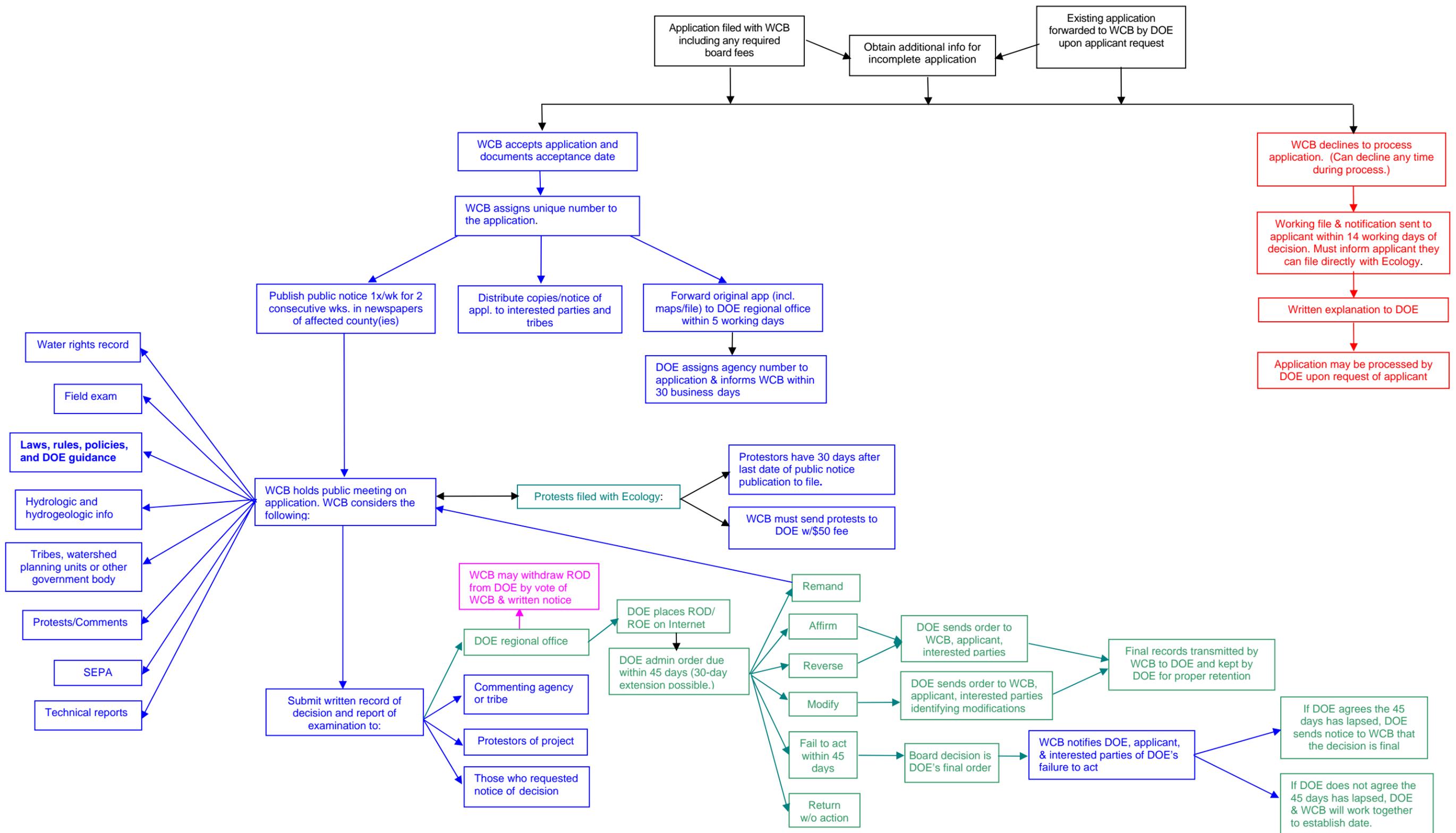
If Ecology agrees that the review period has lapsed, the board's decision becomes final and Ecology will issue an order stating that the record of decision is final. If Ecology disagrees with the board's conclusion that the time has lapsed, Ecology and the board will work together to establish the beginning date of the review period.

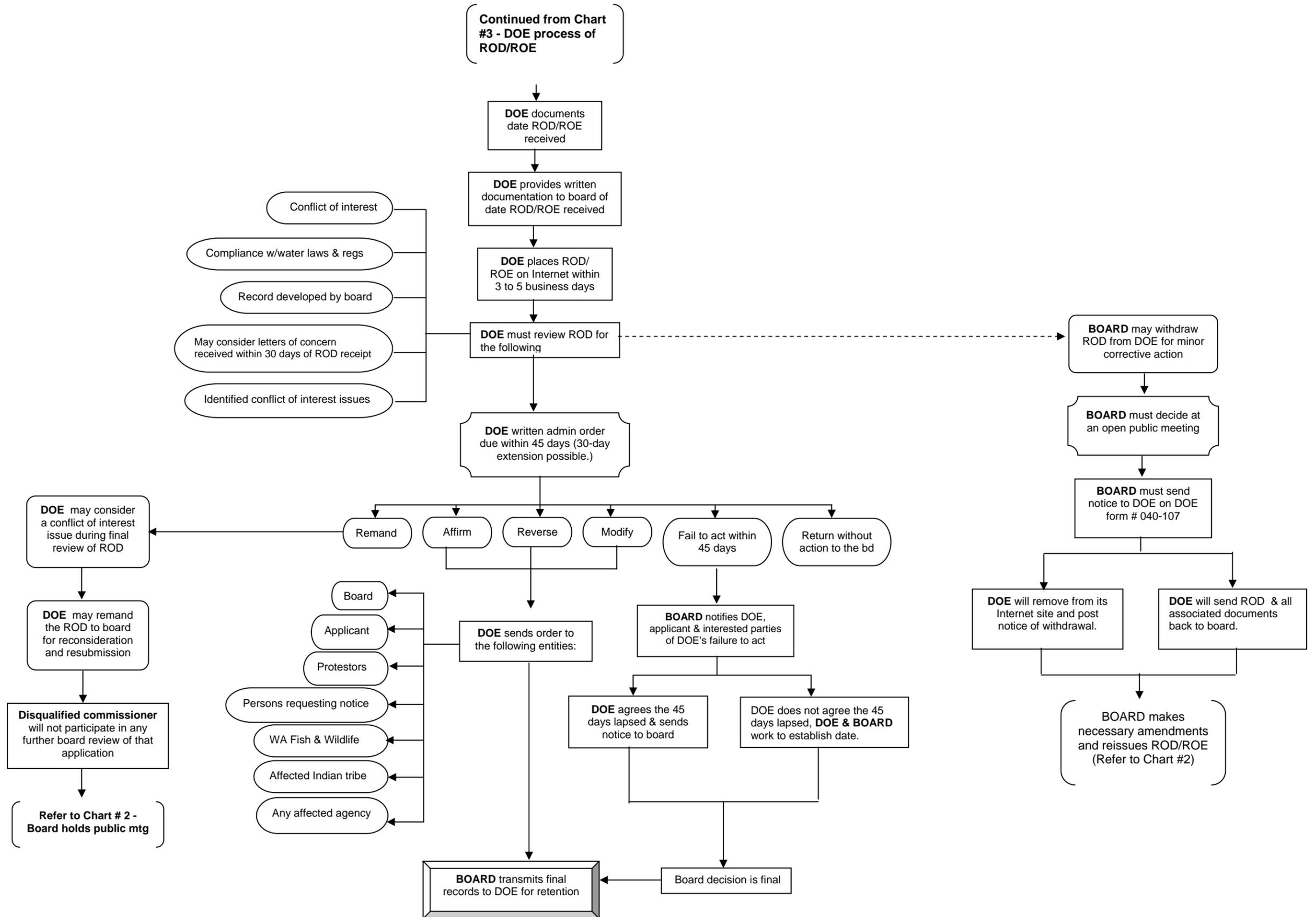
Sincerely,

Water Resources Program

Water Conservancy Board Change Application Flow Chart

Updated: September 18, 2006





(BOARD NAME)
Water Conservancy Board
APPLICATION PROGRESS SHEET

APPLICANT NAME	PHONE
ADDRESS (STREET)	(CITY) (STATE) (ZIP CODE)

Application Status

DATE APPLICATION RECEIVED Date App Received	BOARD'S CHANGE APPL NO.	WATER RIGHT DOCUMENT NUMBER	CROSSES COUNTY LINE	WRIA
--	-------------------------	-----------------------------	---------------------	------

- Application forwarded to Ecology: (Date forwarded) _____
- Board fees paid (Amount and date fees paid) _____
- Application returned to applicant for completion: (Reason and date application was returned)
Date returned to board complete: _____
- Date application accepted by board: _____
- Original water right file requested from Ecology (Date requested) _____
- Application declined: (Reason application was declined)
Date letters sent to applicant and Dept. of Ecology: _____
 Applicant informed that application may be filed with Ecology.
- Ecology letter received (within 30 working days) with state water right change application number: (date received) _____
- Copies of applications sent to interested parties (attach list of recipients): (date letters sent) _____
- A notice of accepted application sent to tribes with reservation/trust lands within jurisdiction.

Publication for Application (Send copy of publication notice to Ecology same time it is submitted to media)

Date published	Name of publication	Affidavit rec'd	Date published	Name of publication	Affidavit rec'd

Protests and Comments/Concerns on Publication

Protest/Comments (received by Ecology and forwarded to board)			Comments/Concerns Received by Board		
*Date Received	Protested by	Date forwarded by Ecology	*Date Received	Commentor's Name	Issue (e.g., impairment, right exists, public interest)

*Any protest received 30 days after the last date of publication of the public notice or without required fee will be filed as a letter of concern.

<input type="checkbox"/> Public meetings on application held: (Date) _____ <input type="checkbox"/> Meeting publication: (Dates/Publication Names) _____	<input type="checkbox"/> Public hearing in other county held: (Date) _____ <input type="checkbox"/> Hearing publication: (Dates/Publication Names) _____
---	---

Examination

- Technical report received: _____
- Field examination: (Date of field examination) _____ Conducted by: (Examination made by) _____

Comments Received at Public Meeting

Received from	Representing	Affiliation (i.e., Tribe, Watershed Planning Unit, governmental body, other)
		<input type="checkbox"/> Tribe <input type="checkbox"/> Watershed Planning Unit <input type="checkbox"/> Government Body <input type="checkbox"/> Other
		<input type="checkbox"/> Tribe <input type="checkbox"/> Watershed Planning Unit <input type="checkbox"/> Government Body <input type="checkbox"/> Other
		<input type="checkbox"/> Tribe <input type="checkbox"/> Watershed Planning Unit <input type="checkbox"/> Government Body <input type="checkbox"/> Other

- Evaluation of the application, including the entire water rights record, has been completed: (Evaluation made by and date of eval) _____
- SEPA-The board ensures that the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, Chapter 197-11 WAC have been met.

Decision and Ecology Review

- Record of decision and report of examination complete: (Date of decision and date parties notified) _____
- Documentation of 45-day review letter received from Ecology: (Date letter received) _____
- 30-day review period extended by director, applicant, board is due (date final review is due) _____
- Ecology's administrative order received (date administrative order received) _____ Appeal period ends (date appeal period ends) _____

TECHNICAL ASSISTANCE

Case Studies

As a Water Conservancy Board becomes established and begins its work reviewing water right change applications, it is common for many questions to arise. Additionally, each application before a board may present very unique situations in which the boards may find the need for additional help. Upon request by a board, Ecology staff is available to assist all water conservancy boards as they process applications.

What is Technical Assistance?

WAC 173-153-120(5) states, “Ecology recognizes that boards are independent entities with the legal right to make records of decision on water right transfer applications without seeking assistance from ecology. However, should a board desire assistance from ecology in processing an application or regarding its administrative functions, ecology will provide technical assistance upon request of the board. This technical assistance may address issues involved in application processing, including procedural requirements and administrative functions, and can include specific information regarding approaches to resolving particular issues. However, in deference to the independent status of conservancy boards, such technical assistance shall be solely in the form of guidance and shall not dictate or otherwise direct any board to take a specific conclusion regarding any aspect of application processing or of a board’s administrative functions.”

Case Studies

The following are hypothetical examples of the types of assistance Ecology staff may offer upon the boards request.

- Situation:** A board receives a water right transfer application to change the place of use and point of withdrawal for an irrigation right. Upon first glance, it appears fairly straight forward. However, after further investigation, additional questions come up regarding the historic use of the right. The board isn’t sure where they might be able to seek out information to satisfy their questions.

Available assistance: Ecology will suggest additional sources of historical records.

Assistance limitation: Boards are encouraged to work with the applicant to obtain additional information if needed. A board may request the applicant obtain necessary records.
- Situation:** The newly formed board has just received the required training from Ecology and is now authorized to make decisions on water right transfer applications. They realize there are some operational decisions to make before they actually begin processing applications and are unsure how to begin their organization.

Available assistance: Ecology will advise the board regarding operational procedures to meet requirements of law and examples of how existing boards operate. Ecology staff is available by email, telephone, or mail. If requested and depending on availability, staff may attend meetings to answer procedural questions.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Assistance limitations: Boards are responsible for making the operational decisions such as writing their bylaws, meeting times, meeting locations, etc. Ecology will not provide specific direction for board operations.

3. Situation: A board receives five applications from one applicant and the board is unable to make an initial determination as to the complexity of the applications.
Available assistance: Ecology will help identify potential issues related to the application or geographic area.
Assistance limitations: Ecology will not provide direction as to whether the board should accept the application.
4. Situation: A board has accepted their first application, forwarded it to Ecology, and published the public notice. They begin their investigation of the proposal and are unsure of what to look for on a field exam.
Available assistance: Ecology will provide guidance and training on what to look for, how to take measurements, and sample forms for use in the field.
Assistance limitation: Ecology will not conduct and will not typically participate in the field examination.
5. Situation: An application is submitted to a board requesting a change in the point of withdrawal to a point of diversion from a local stream. There is some question as to whether this stream is part of the same body of water as the ground water currently being withdrawn.
Available assistance: Ecology can assist in helping boards understand the hydrology of the area and the relationship of water bodies.
Assistance limitation: Ecology will not provide in depth analysis of the hydrogeology of a particular area or in relation to a particular application. Boards may request the applicant obtain a report from an independent qualified hydrogeologist. If a report is obtained, Ecology may review the report in order to address specific questions asked by the board. If it appears to Ecology there were potential issues or sources of information not considered Ecology may mention these omissions.
6. Situation: An application to change a place of use and increase acres irrigated is being processed by a board. The board seeks assistance in calculating the water available for additional acreage.
Available assistance: Ecology will advise the boards of requirements of law and how the law is applied to a specific water use.
Assistance limitation: It will be up to the board to apply this guidance to the specifics of the application.
7. Situation: Ecology is requested to attend a county commissioners meeting to speak on formation, operations of boards, etc.
Available assistance: Upon invitation by a particular entity, Ecology staff may be available to make presentations and provide education on a variety of topics related to water conservancy boards. Such topics may include creation of boards, past legislative reports, restructuring a board, or board operations.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Assistance limitation: Ecology will not make a recommendation concerning whether to form a board, regarding the geographic jurisdictional area, or participate in commissioner appointment.

8. Situation: A water conservancy board has a vacancy. They have a need to fill the position quickly due to quorum issues the board has faced. However training is four months away.
Available assistance: Upon request, Ecology will coordinate training with boards and counties as they attempt to fill the vacancy quickly. In addition to the new member trainings scheduled twice yearly, Ecology is willing to work toward scheduling new member training sessions based on demand and availability of the trainers.
Assistance limitation: Ecology will not make a recommendation concerning or participate in commissioner appointments. Ecology may limit the number of attendees to a training session to allow the best training available.
9. Situation: A county is exploring the restructuring of an existing board.
Available assistance: Ecology will provide advice on the restructure process. Ecology will also discuss the potential advantages and disadvantages of restructuring as well as the variety of ways of restructuring.
Assistance limitation: Ecology will not suggest whether a county should or should not restructure a board.
10. Situation: The board has investigated an application proposal and is having difficulty agreeing on conclusions for a record of decision. The board requests Ecology assistance.
Available assistance: Ecology will help the board understand the legal requirements for evaluating a change application including public interest, tentative determination of an existing right, and issues of impairment of existing rights. The board may reevaluate the application.
Assistance limitation: The board is a separate unit of local government and it is the responsibility of the board to draw its own conclusion. Ecology will not direct the decisions of the board.
11. Situation: The board requests Ecology to draft a public notice for a proposed transfer application.
Available assistance: If requested, Ecology will review a public notice drafted by a board but only to determine whether the public notice meets requirements of rule.
Assistance limitation: Ecology will not provide advice as to the accuracy of the public notice. The board should work with the applicant to ensure the accuracy of the information included in the public notice. Upon review of the record of decision, Ecology will refer to the public notice to ensure adequate and accurate notice is given regarding a proposed transfer application.
12. Situation: A board receives a technical report from an applicant addressing issues of a complex application. The board requests Ecology's review of the report.
Available assistance: Ecology will review the report in order to address specific questions of the board. If it appears to Ecology there were potential issues or sources of information not considered Ecology may mention these omissions.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Assistance limitation: Ecology will not provide in depth interpretation of a report. The board should request clarification directly from the applicant. If the board receives a report directly from a consultant hired by the board for a third-party determination, the board should request clarification of the report from the consultant.

13. Situation: A board has requested review on a draft record of decision.

Available assistance: Ecology will review:

- a. Issues investigated and information collected by the board;
- b. Whether or not the information is adequately described;
- c. The report of examination for completeness with regard to WAC 173-153-130;
- d. The methodology used to reach the conclusions;
- e. Whether the conclusions are supported by the information reported; and
- f. Whether the recommendations are supported by the conclusions.

Assistance limitation: Ecology will not agree or disagree on the conclusions or recommendations contained within a draft document.

14. Situation: An applicant's attorney provides a board with a legal opinion regarding interpretation of water law. The board asks for Ecology's review of that opinion.

Available assistance: Ecology will review the opinions and determine its need to evaluate and respond to the board. If Ecology does provide an evaluation then staff will use its internal resources to provide comment to the board for its consideration.

Assistance limitation: Ecology staff are not attorneys and cannot provide boards with legal advice. The Attorney General's Office represents Ecology for legal matters. The Attorney General's Office cannot represent nor provide legal advice to boards. As independent governmental entities it is suggested boards obtain independent counsel if necessary.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Internet withdrawal notice

The Board name Water Conservancy Board had previously issued a Record of Decision and Report of Examination on Date in the matter of Application for change/transfer No. Board assigned number filed by the Applicant name. On date of withdrawal the board withdrew the referenced Record of Decision and Report of Examination. The Ecology review period provided by RCW 90.80.080 is terminated without prejudice for the referenced application for change/transfer.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Checklist for Ecology Regional Office Staff Water Conservancy Board Process

Updated: 05/30/06

The purpose of this form is to provide a means to document steps required of Ecology within the water conservancy board process pursuant to Chapter 90.80 RCW and Chapter 173-153 WAC. The regions are free to adapt the form to their situation as needed. See the staff guidance document for specific response time requirements.

Board Name: _____ Applicant name _____ Bd Assigned App No. _____

State Assigned App No. _____ Parent document number _____

Application

1. Did the applicant submit a written request to both Ecology and the board to convey to the board an application currently on file with Ecology?
 - Yes, convey the application directly to the board for its determination to accept or decline processing at no charge to the board.
 - No, continue processing applications in line.

2. Did the applicant submit an application directly to the board?
 - Yes, <Date> application was received by Ecology from board.
 - No, sit back and relax. Nothing to do.

3. Was the application form, received by Ecology from the board, formally accepted by the board and a board number assigned to it?
 - Yes,
 - <Date> [number assignment memo](#) letter sent to board indicating state assigned number
 - Enter into WRTS. Application is in our line but considered a part of our workload.
 - No, <Date> [number assignment memo](#) letter sent to board indicating application process is incomplete

4. The board or a commissioner requested copies of water right files. Are the files related to an application before the board?
 - Yes, provide all related files, studies, etc. to the board, including previous change decisions, at no charge to the board.
 - No, if the records are not related to an application before the board, the board must submit a formal records request.

Board declines to process the application

5. Did Ecology receive written notification addressed to the applicant from the board that the board declined to continue processing an application (must be a vote of the board) and that the applicant may take the application to Ecology for processing?
 - Yes, the application remains in line at Ecology.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- <Date> the notification was received by Ecology.
- <Date> Ecology sends a [letter](#) to applicant asking whether applicant wants Ecology to process application.
- No, do nothing (yippee!)

6. Did the applicant request Ecology to process the application?

- Yes, Ecology may send [letter](#) requesting additional explanation from the board about why the board declined.
- No, Ecology may inform the reject and remove that application from the line.

7. Did the board notify Ecology an applicant independently withdrew an application from the board (no vote required by the board)?

- Yes, if the board did not vote to decline processing then the application is also withdrawn from Ecology's line.
- No, do nothing (yippee)

Process

8. Does the change application involve transferring water into trust?

- Yes, contact the regional trust coordinator. Boards have limited authority to transfer trust water. They can only transfer water as it relates to RCW 90.03.380, 90.03.390, and 90.44.100.
- No, it's a no brainer . . . sit back and relax.

9. Did the region receive a copy of the public notice from the board at the same time the board sent it in to the newspaper for publishing? (This is not the affidavit)

- Yes, file it so the region knows what to do if it receives a protest.
- No, notify the board as soon as you realize it has not been received.

10. Did the region receive a valid protest with a \$50 fee or a comment? [See valid protest requirements in WAC 173-153-090(7) or described in attached letter; if not valid, it is considered a comment]

- Yes, protest or comment was received on <Date>
 - Copy of protest and [letter](#) sent to board on <Date>
 - Comment received on <Date> comment and [letter](#) sent to board
- No response to public notice received

11. Did the region receive a request for technical assistance, either written or orally?

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- Yes, respond timely to technical assistance requested by the board, whether orally or written. Ecology's assistance should be solely in the form of guidance and not dictate or otherwise direct any board to reach a specific conclusion regarding any aspect of application processing or of a board's administrative functions.
- No, Ecology should not provide advice or assistance unless requested.

12. Is Ecology staff required to attend board meetings or hearings?

- Yes, ARE YOU KIDDING ME? Have you nothing else to do?
- No, staff is encouraged to attend when requested but are not required to do so. Technical assistance is generally suggested to be provided outside of board meetings or hearings and is not subject to the Open Public Meetings Act.

Record of Decision

13. Did the board request technical assistance for Ecology to review a draft report of examination for the board?

- Yes, Ecology is obligated to respond and review the report of examination. This is a critical time to provide any feedback regarding potential "fatal" flaws in the report.
- No, the board must request technical assistance. You may suggest it but if the board declines the help we have no obligation.

14. Did Ecology receive a final record of decision/report of exam from a board?

- Yes, send [letter](#) to board documenting date ROD/ROE was received by Ecology and the start of the 45 day clock
- No, do nothing (yippee!)

15. After receiving the record of decision, has Ecology determined that a board commissioner violated the conflict of interest statute (RCW 90.80.120)?

- Yes, return the record of decision, report of examination, all related records, and the [without action letter](#) back to the board
- No, do nothing (wow, this is easy!)

16. Did a commissioner refuse to recuse or did the basis for disqualification become apparent after the board issued a record of decision but within the 30-day time period for filing objections with the department?

- Yes, if Ecology determines the commissioner should be disqualified, the department must remand the record of decision to the board for reconsideration and resubmission. The disqualified commissioner cannot participate in any further board review of the application.
- No, but a conflict of interest has been determined by the department. Then see number 14 above.

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- No, there are no conflicts of interest. The board should continue processing normally.
17. Are all board commissioners who participated in the decision eligible? (check with coordinator if unsure)
- Yes, process decision as required
- No, then ask the following:
- Is the participation of the ineligible person critical to the decision?
- Yes, return the record of decision, report of examination, all related records, and the [without action letter](#) back to the board
- No, continue processing decision
- Unsure, check with the water conservancy board coordinator
18. Was the record of decision adopted by a majority of the board? (check with coordinator if unsure)
- Yes, process decision as required
- No, return the record of decision, report of examination, all related records, and the [without action letter](#) back to the board.
19. Does Ecology require more than the 45 days to process the record of decision?
- Yes, send the [30-extension letter](#) to the board
- No, make the final decision and issue administrative order
20. Did the board vote to withdraw the record of decision from Ecology?
- Yes, the formal withdrawal form must be signed and received by Ecology to confirm the vote. Then send the record of decision and all related documents are returned to the board for follow up.
- No, continue processing. If the ROD does not comply with water law, Ecology may be required to reverse the board's decision.
21. Did the board follow Washington water law when processing the application?
- Yes, the ROD may be affirmed or modified as needed and Ecology sends [affirmation](#) or [modification](#) order.
- No, the ROD may be [reversed](#) through an order.
22. Do you know where to send the Administrative Order related to the record of decision/report of examination?
- Yes, then Git R Done!
- No, send copies to the following entities:
- Applicant,
- Board,

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

- Protestors,
- Persons requesting notice,
- WA Fish and Wildlife,
- Affected Indian tribe,
- Any affected agency, and
- Water conservancy board coordinator

23. Does Ecology continue to work with the board after its final administrative order on the record of decision?

- Yes, be prepared to discuss the results with the board and other interested parties. There is potential that the board may be involved in an appeal of Ecology's order. **AND**
- No, Ecology works with the applicant regarding the beginning and completion of construction and issuing new water right documents related to the water right.

Other

24. Unsure what to do?

- Yes, contact the water conservancy board coordinator (509) 329-3421, jaca461@ecy.wa.gov.
- No, I'm right on target and doing a great job!!! Then pat yourself on the back and say I love this stuff!!!

Index

Administrative order
 Affirm 13
 Modify 13
 Reverse 13
Alternates 4, 56
Application number
 board-assigned 8
 Ecology-assigned 8, 66, 67, 86
Board-assigned number 8
Cancellation 15
Continuing education
 Acceptable/Unacceptable 22
 Ecology sponsored 21
 Eligibility 20
 Training credit 1, 21, 55
Coordinator, water conservancy board 5
Creation (of a board) 6, 24, 37
Decline to process 9
Definitions 4
Dual-filing of application 6, 8, 32, 69
Ecology’s primary responsibilities 6
Eligibility 1, 51, 53
Fees 7
Forms
 Additional information request letter 70
 Administrative order - affirm 75
 Administrative order - modify 77
 Administrative order - reverse 79
 Application acceptance memo 66
 Approval of board creation 39
 Continue processing inquiry letter 1, 69
 Continuing education confirmation letter 1, 55
 Decision to withdraw a record of decision and report of examination 5, 65
 Decline to process letter 68
 DOE review of ROD flow chart 11, 85
 Incomplete continuing education letter 54
 Incomplete petition package 1
 Incomplete restructure petition package 1
 Ineligibility notification 1, 53

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Interested parties letter	1, 82
Internet withdrawal notice	91
Number assignment letter	67
Petition checklist	36
Petition checklist to restructure	1, 40, 41
Primary contact report	1, 48
Progress sheet	86
Protest receipt letter	73
Public notice template	81
Record of decision receipt letter	74
Report to the legislature	1, 56, 57
Return without action letter	71
Term expiration letter	44
Thirty-day extension letter	83
Training certificate	1, 50
Training completion letter	1, 46
Training credit request	63
Training Credit Request	1, 5, 22, 31, 52, 54
Training materials letter	45
Training status memo	51
Withdrawal	5
Withdrawal of record of decision and report of examination	64
Maintenance of water right file	6
Open Public Meetings Act	17, 81
Primary contacts	1, 48
Protests	9, 10, 33
Public notice	33
Record of Decision (ROD)	1, 4, 5, 31, 58, 64, 65, 74, 75, 79, 91
Ecology review	11, 85
Internet posting	12
Withdrawal	5
Report of Examination (ROE)	1, 5, 31, 59, 64, 65, 75, 79, 91
Reports	
Boards	1, 56, 57
Restructuring (a board)	26
Technical assistance	16, 17, 87
Training	
Continuing education Ecology sponsored	21
Continuing education other	21
Continuing education tracking	20
New commissioners	18
Trust water	9, 16

GUI 4100 Staff Guidance for Administration of Chapter 173-153 WAC

Water conservancy board coordinator	5
Withdrawal.....	64
Withdrawal (of ROD)	5, 12, 13
WRTS	7, 9