

(Draft) POL 1022 WATER RESOURCES PROGRAM POLICY

Resource Contact: Policy and Planning Section Effective Date: XX-XX-06

PRIORITY PROCESSING—Yakima River Basin WATER BUDGET NEUTRAL PROJECTS

References: Chapter 90.42.110-.138 RCW, Chapter 173-152 WAC, Chapter 173-500 WAC

Purpose: To clarify the definition of non-consumptive water use in the context of priority processing under WAC 173-152-050 of applications for new surface or ground water permits within the Yakima River basin that are mitigated by a trust right with a priority date earlier than May 10, 1905.

Application: This policy clarifies when projects participating in the Yakima River Water Bank to meet mitigation requirements may be considered non-consumptive in the context of priority processing ahead of competing applications within Water Resource Inventory Areas (WRIA) 37, 38, and 39, consistent with the “no diminishment” non-consumptive use definition in WAC 173-500-050.

**Background:** The Yakima River basin has a long history of contention over water allocation and rights. Since the mid-1850s, individuals, partnerships, irrigation districts, municipal corporations, and the US Bureau of Reclamation (USBR) have collectively constructed works that routinely deliver more than 2 million acre-feet of surface water and ground water annually to approximately 500,000 acres of irrigated land and the to meet domestic and industrial water needs of a population of more than 200,000 residents within the basin.

In 1981, the USBR withdrew all unappropriated surface water in the Yakima River basin under Chapter 90.40 RCW for planning the Yakima River Basin Water Enhancement Project (YRBWEP). The withdrawal has been extended through January 18, 2008.

In 1993, the Yakama Nation appealed several dozen reports of examination issued by Ecology recommending approval of ground water permits within the basin. The appeals were resolved in 1999 through a settlement agreement and a Memorandum of Understanding (MOU) among the

Yakama Nation, the USBR, and Ecology. The parties agreed to a study of surface water and ground water interactions and development of a numerical model by the US Geological Survey (USGS). The USGS is within 1 year of completion of the study. The MOU contemplated a withdrawal of water under RCW 90.54.050 to ensure that permits were not issued until the study was completed and the numerical model was available for use in making permit decisions. The three parties have twice agreed to a supplemental MOU to respond to declared drought conditions in 2001 and 2005 using a well defined mitigation strategy.

Surface water management in the Yakima basin is inextricably tied to the priority system. The general adjudication of surface waters initiated in 1977 is substantially complete. Nearly all rights have been defined in Conditional Final Orders, including the Yakama Nation's instream flow rights. The USBR manages flows at several locations in the basin to satisfy fisheries' requirements. Target flows are set in federal law at the Yakima River near Parker and the Yakima River near Prosser. The flow targets range from 300 to 600 cfs and are adjusted based on water supply conditions and forecasts. Flow targets are also set each year in the Cle Elum River, the Yakima River near Cle Elum, and the Yakima River near Easton to maintain adequate flows for successful salmon spawning and incubation pursuant to a federal district court decision. Target flows are adjusted seasonally at the recommendation of the System Operations Advisory Committee (SOAC). These target flows constrain both water users and reservoir operations at different times of the year and require the USBR to optimize its storage and delivery operations to meet multiple objectives at different locations throughout the year.

Out of these competing instream and out-of-stream demands, three classes of surface water rights are significant for management purposes:

1. Rights that pre-date the May 10, 1905 USBR withdrawal under Chapter 90.40 RCW ("Senior") totaling more than 1 million acre-feet;
2. Rights based on the May 10, 1905 withdrawal ("Proratable") totaling approximately 1 million acre-feet; and,
3. Rights based upon claims established or permits and certificates issued after May 10, 1905 "post-1905 or junior") totaling fewer than 100,000 acre-feet.

In 2001, the Roza Irrigation District, a May 10, 1905 proratable water right holder, obtained a court order curtailing the use of water by all post-1905 right holders. That order has been replaced

with an order entered in 2004 and revised in early 2005 that imposed curtailment on post-May 10, 1905 water users any time the USBR declares prorationing for the May 10, 1905 users.

Since 2001, Ecology and the USBR have co-convened a periodic review process (the Water Transfer Working Group) for proposals to change or transfer water rights in the Yakima River basin. Water budget neutrality with respect to Yakima Project operations and the rights of parties dependent upon USBR deliveries (proratable contracts) is an important element among the several review criteria employed by the group.

In 2003, the legislature authorized Ecology to use the trust water program for water banking purposes in the Yakima River basin.

Definitions: The following definitions are intended within this policy:

1. "Consumptive use at Parker" means the consumptive use associated with the historical exercise of a water right to divert water from the Yakima River or a stream tributary to the Yakima River at Parker.
2. "Ground water closely related to the Yakima River" means ground water within ground water bodies and aquifers that are hydraulically connected to the Yakima River and with hydraulic characteristics and locations such that the impact of the use of water from a well or wells would predominately affect the Yakima River within the same year.
3. "Non-consumptive Use" is a type of water use where either there is no diversion from a source body, or where there is no diminishment of the source.
4. "Substantially enhance or protect the quality of the natural environment" is a standard described in Chapter 173-152-050 and used by Ecology to manage its workload to allow priority processing of certain applications for permit. This determination is made by Ecology on either a case-by-case review in consultation with the Yakama Nation and the Washington Department of Fish and Wildlife (WDFW), or is a determination by Ecology in consultation with the Yakama Nation and WDFW considering the net environmental benefits associated with the portfolio of trust water rights held by the Trust Water Program for the purposes of water banking pursuant to RCW 90.42.110-.138.

5. “Total Water Supply Available” (TWSA) means the calculation by the USBR indicating the amount of water available for surface water users for the irrigation season. The calculation is made at USGS 12505000 near Parker.
6. “Trust water right transaction” is a permitting action or written acknowledgement of a permit-exempt ground water use that relies on a water right previously placed into the Trust Water Program.
7. “Water Budget Neutral Project” means a project where diversions or withdrawals of waters of the State are proposed in exchange for discharge of at least an equivalent amount of water from other water rights that are placed into trust.

Policy: Ecology may process an application for a permit under RCW 90.03.250 -.290 and RCW 90.44.055 -.060 within WRIAs 37, 38, and 39 if the application is accompanied by a trust water right that mitigates the consumptive use impact to TWSA. The application review must address each of the statutory tests (see RCW 90.03.290 and RCW 90.44.060) for issuance of a permit. In cases where local impacts arise because the place of use of the trust water right (primary and secondary river reaches) differs significantly from the river reaches affected by the proposed withdrawal, Ecology may be required to deny the application due to impairment. Additionally, Ecology may choose not to process the application because the Trust Water Program either does not hold sufficient rights to ensure that requirements of POL-1021 for priority processing are satisfied, or the proposal does not appear to substantially enhance or protect the quality of the natural environment.

Procedures:

1. Until the August 12, 1999 MOU is terminated, replaced, or a supplemental MOU relating to implementation of the Yakima Water Bank is negotiated, ground water applications may be evaluated, however, permits cannot be granted.
2. An application for surface water right, or ground water that is hydraulically related to the Yakima River, may be processed when accompanied by a trust water rights transaction that represents the same consumptive use impact during the irrigation season, as measured at Yakima River at Parker.
3. Applications must be processed in accordance with PRO-1000, Chapter 1, as supplemented by the following additional requirements.

4. A permit may be issued when the application is accompanied by an assignment of a portion of or all of a trust water right established under RCW 90.38 and RCW 90.42.
5. The application must request the full amount of the intended diversion or withdrawal amount. The assignment of a portion of a trust water right must, at a minimum, represent the estimated consumptive use for the use(s) requested on the application.
6. Review of a proposed withdrawal of ground water must include a determination that ground water is available from the aquifer and that water can be withdrawn without detriment or injury to existing rights.?
7. If the trust water right that would mitigate the new application is not located in the same sub-basin as the source on the new application, particular consideration must be given to ensure that existing surface water and ground water rights within the sub-basin are not impaired. If impairment would result, the application must be modified, conditioned to prevent impairment, or denied.
8. If the trust water right is from a mainstem source or a tributary stream or river that, considering its priority date, provides high reliability, a permit can be approved for a well or wells withdrawing water from any aquifer that is hydraulically connected to the Yakima River.
9. If the trust water right originates from a water right subject to periodic curtailment due to lack of physical supply at the original point of diversion or senior "calls" for water based on priority date, then a ground water permit may be approved, subject to the same limitations in availability as the trust water right, and to withdraw water only from ground water bodies and aquifers closely related to the Yakima River.
10. Each permit must be conditioned to ensure that the relationship to the trust water right is clear and that any limitations in the trust water right are accurately reflected in the permit.
11. Ecology must manage the trust water right in accordance with the conditions established at the time the water right was conveyed to the Trust Water Program.

**Special Note:** These policies and procedures 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.

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