

**POLICY FOR THE EVALUATION OF CHANGES TO ENABLE IRRIGATION OF ADDITIONAL ACREAGE OR THE ADDITION OF NEW PURPOSES OF USE TO EXISTING WATER RIGHTS**

Contact: Program Development and Operations Support Section      Effective Date: 07/12/04  
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References: RCW 90.03.330; RCW 90.03.380; RCW 90.42; WAC 173-165; WAC 508-14; POL-1200; PRO-1210; GUID-1210; POL-1070.

Purpose: To document procedures that the Department of Ecology will use in reviewing water right change applications pursuant to RCW 90.03.380(1) that seek to enable irrigation of additional acreage or the addition of new purposes of use to existing water rights.

This policy applies to change applications involving the addition of irrigated acreage or new purposes to a water right; these changes are also governed by POL-1200. This policy supplements:

- POL-1200, Policy for the Evaluation of Changes or Transfers to Water Rights
- PRO-1210, Calculating and Applying the Annual Consumptive Quantity (ACQ)
- GUID-1210, Determining Irrigation Efficiency and Consumptive Use

**This policy supersedes any previous policy statement with which it conflicts.**

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**Definitions:**

- "Annual Consumptive Quantity (ACQ)" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right.
- "Diversion" as used in this policy refers to both the diversion of surface water and the withdrawal of groundwater.
- "Perfection" occurs when water under permit has been put to beneficial use and all of the conditions of the permit, as well as those in RCW 90.03.330, have been met.<sup>1</sup>
- "Return flows" means waters that, after having been diverted for a beneficial use, escape control of the water right holder and return to a public water body. Return flows may include, for example, waters lost through conveyance systems inefficiency or waters used for a beneficial purpose that are not fully consumed by the purpose of use.

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<sup>1</sup> Including requirements in Chapter 173-165 WAC.

**Application:**

Addition of new uses: Ecology interprets the “addition of new uses” under RCW 90.03.380(1) to mean the addition of a previously unauthorized purpose(s) of use, while retaining an existing purpose of use.

- If the existing purpose of use will not be retained, entirely changing a water right to one or more new purposes of use does not trigger an ACQ determination.<sup>2</sup>

Addition of *instream flows* or *groundwater preservation* as a new use: Per RCW 90.42, the addition of instream flows or groundwater preservation as the added purpose of use is a different circumstance than other types of added use.

- *Acquisitions:* Acquisitions are commonly water rights that the state leases or purchases, then holds in the Trust Water Rights Program (TWRP) for the purposes of enhancing instream flows. In these cases, the purpose of use identified on the Report of Examination (ROE) for change is “instream flow.” Pursuant to RCW 90.42.040, Ecology will not conduct an ACQ calculation on these changes. Instead, Ecology will calculate the consumptive use of the right during the tentative determination of extent and validity.
- *Water banking:* Water banking is commonly an activity in which a water right is held in the TWRP with the intent of using the trust water right as mitigation for new out-of-stream uses. In these cases, the purpose of use identified on the ROE for change is “instream flow and mitigation.” In line with RCW 90.42.080(5) and 90.42.100(3)(a), Ecology will apply the ACQ calculation when processing these change applications.

Donations to instream flow or groundwater preservation: Pursuant to RCW 90.42.080, donating all or a portion of a water right into the TWRP does not require an ACQ determination. This applies to both permanent and temporary donations.

Surface water permits: Changes triggering ACQ for surface water permits as described in RCW 90.03.380 can only be authorized following perfection of the permit under RCW 90.03.330.

Groundwater permits: Calculation of ACQ can only be made on portions of groundwater permits put to beneficial use.<sup>3</sup> Irrigated acres may be added to only on the portion of the permit that has been beneficially used and according to the following steps:

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<sup>2</sup> POL-1070 allows Ecology to recognize the agreed division of a water right where multiple land owners own land to which the water right is appurtenant. Where Ecology has recognized such a division and a change is filed on a portion of the original right, the permit writer only performs an ACQ evaluation on the portion of the original right proposed for change and only if such an evaluation is required by statute as described herein.

<sup>3</sup> ACQ may be applied to permits in areas governed by Chapter 508-14 WAC provided the permit has complied with Chapter 173-165 WAC and received a superseding permit subject to WAC 508-14-030(2)(b).

1. The applicant will file a proof of appropriation form and the water right will undergo a proof exam by a Certified Water Rights Examiner in accordance with Chapter 173-165 WAC for the portion perfected under the water right.
2. Ecology will split the groundwater permit into the perfected and unperfected portions. Ecology will then issue a certificate for the perfected portions and a superseding permit for the unperfected portions. Assignment(s) may be required if ownership of the water right permit changes.
3. The applicant may then file a change application for the certificated portion of the right and Ecology would conduct an ACQ analysis on that right.

The undeveloped acreage may continue to be developed consistent with the schedule approved by Ecology.

Changes to add purposes of use to groundwater permits may be authorized only to the extent the permit has been beneficially used. See *R.D. Merrill v. PCHB*, 137 Wn.2d 118, 133 (1999), RCW 90.44.100, and RCW 90.03.380.

**Evaluation:**

- 1) Calculate the amount of water available under the existing right to irrigate additional acres or to add the new purpose(s) of use. This calculation should include the following elements:
  - a) The annual quantity of water authorized for use under the water right;
  - b) The amount of water put to beneficial use;
  - c) The estimated return flow; and
  - d) The annual consumptive quantity.<sup>4</sup>
- 2) Determine the extent and validity of the right proposed for change as prescribed in POL-1200.<sup>5</sup>
- 3) Determine the annual consumptive quantity by following these steps:
  - a) Determine the annual quantity of water diverted (within the limit of the water right) for each of the five years of continuous beneficial water use, considering measurement data, existing records, and estimation (see PRO-1210).

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<sup>4</sup> For example, water that is transpired by plants at the place of use, water that escapes from a reasonably efficient conveyance system or from the place of use but does not become return flows and water that is contained within a product or within a production byproduct.

<sup>5</sup> When analyzing applications involving ACQ and de facto changes, Ecology will look to the most recent five years of continuous beneficial use. See POL-1120 for guidance on processing de facto changes.

- b) Determine the consumptive use for each of the five years.
  - c) Average the two years of highest consumptive water use (see PRO-1210). This is the annual consumptive quantity defined in RCW 90.03.380.
- 4) Review the proposed project's consumptive use to determine its feasibility within the limits of the determined annual consumptive quantity.
- a) Historic use may be used to estimate future use if the manner and extent of that use will remain unchanged. Any changes to a portion of that use should be evaluated for potential effects on the use as a whole. The consumptive portion of elements that are changed may be estimated in accordance with PRO-1210.
  - b) The estimated annual consumptive use for the new or expanded uses is the sum of existing unchanged uses, existing changed uses, and new or expanded uses. This use cannot exceed the annual consumptive quantity of the existing water right
- 5) Issue a decision. In addition to the requirements set forth in POL-1200, a decision approving a change must include:
- a) Limitations to ensure that the annual consumptive quantity is not exceeded as a result of the change;
  - b) Metering provisions to verify compliance with the terms of the changed right.



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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.*