2021 Water Conservancy Board Training Presentations

February 22-25, 2021
### DAY ONE – MONDAY

<table>
<thead>
<tr>
<th>Topic</th>
<th>Presenter</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Welcome</td>
<td>Jeff Marti, Acting Water Resources Conservancy Board Coordinator <a href="mailto:wrwcb@ecy.wa.gov">wrwcb@ecy.wa.gov</a> or <a href="mailto:jeff.marti@ecy.wa.gov">jeff.marti@ecy.wa.gov</a></td>
<td>8:00-8:15</td>
</tr>
<tr>
<td>Introducing yourself and other WebEx Tips and Tricks</td>
<td>Barbara Brooks, Water Resources Communications</td>
<td>8:15-8:30</td>
</tr>
<tr>
<td>Water resources common terms, definitions, &amp; acronyms</td>
<td>Buck Smith, Northwest Region Office, Hydrogeologist</td>
<td>8:30-9:00</td>
</tr>
<tr>
<td>Water Conservancy Board Structure and Responsibilities</td>
<td>Ben Carr, Central Region Office, Water Resources Permit Writer</td>
<td>9:00-10:00</td>
</tr>
<tr>
<td><strong>BREAK</strong></td>
<td></td>
<td>10:00-10:15</td>
</tr>
<tr>
<td>Structure and Responsibilities (cont.)</td>
<td>Ben Carr, Central Region Office, Water Resources Permit Writer</td>
<td>10:15-11:30</td>
</tr>
<tr>
<td>Open Public Meetings and Open Public Records Acts</td>
<td>Jennifer Steele, Office of Attorney General</td>
<td>11:30-12:30</td>
</tr>
<tr>
<td>Water Conservancy Board Listserv and wrap-up</td>
<td>Jeff Marti</td>
<td>12:30-12:35</td>
</tr>
</tbody>
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### DAY TWO – TUESDAY

<table>
<thead>
<tr>
<th>Topic</th>
<th>Presenter</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Welcome and Recap</td>
<td>Jeff Marti</td>
<td>8:00-8:20</td>
</tr>
<tr>
<td>State Auditor Reporting Responsibilities</td>
<td>Andrew Wolf, State Auditor Office</td>
<td>8:20-9:20</td>
</tr>
<tr>
<td>Water Conservancy Board Member Responsibilities</td>
<td>Trevor Hutton, Central Region Office, Water Resources Program, Section Manager</td>
<td>9:20-9:50</td>
</tr>
<tr>
<td><strong>BREAK</strong></td>
<td></td>
<td>9:50-10:05</td>
</tr>
<tr>
<td>Department of Ecology Responsibilities and Member Duties</td>
<td>Trevor Hutton, Central Region Office, Water Resources Section Manager</td>
<td>10:05-10:35</td>
</tr>
<tr>
<td>Hydrogeology 101</td>
<td>Kurt Walker, Central Region Office, Hydrogeologist</td>
<td>10:35-11:30</td>
</tr>
</tbody>
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### DAY THREE – WEDNESDAY

<table>
<thead>
<tr>
<th>Topic</th>
<th>Presenter</th>
<th>Time</th>
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</thead>
<tbody>
<tr>
<td>Welcome and Recap</td>
<td>Jeff Marti</td>
<td>9:00-9:20</td>
</tr>
<tr>
<td>Water Rights 101</td>
<td>John Rose, Northwest Region Office, Hydrogeologist</td>
<td>9:20-11:05</td>
</tr>
<tr>
<td>Water Resources Explorer</td>
<td>John Rose, Northwest Region Office, Hydrogeologist</td>
<td>11:05-11:20</td>
</tr>
<tr>
<td>Water Right Claims</td>
<td>Kurt Walker, Central Region Office, Hydrogeologist</td>
<td>11:20-11:50</td>
</tr>
<tr>
<td><strong>LUNCH</strong></td>
<td></td>
<td>11:50-12:30</td>
</tr>
<tr>
<td>Tentative Determinations</td>
<td>Trevor Hutton, Central Region Office, Water Resources Section Manager</td>
<td>12:30-1:15</td>
</tr>
<tr>
<td>Case Law Review</td>
<td>Steve North, Office of Attorney General</td>
<td>1:15-2:10</td>
</tr>
<tr>
<td><strong>BREAK</strong></td>
<td></td>
<td>2:10-2:25</td>
</tr>
<tr>
<td>Relinquishment and Abandonment</td>
<td>Steve North, Office of Attorney General</td>
<td>2:25-2:55</td>
</tr>
<tr>
<td>Beneficial Use</td>
<td>Alan Reichman, Office of Attorney General</td>
<td>2:55-3:10</td>
</tr>
<tr>
<td>Preview of the Faulty ROE</td>
<td>Herm Spangle, Eastern Region Office, Permit Writer</td>
<td>3:10-3:20</td>
</tr>
<tr>
<td>Review and Wrap Up</td>
<td>Jeff Marti</td>
<td>3:20-3:30</td>
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### DAY FOUR – THURSDAY

<table>
<thead>
<tr>
<th>Topic</th>
<th>Presenter</th>
<th>Time</th>
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</thead>
<tbody>
<tr>
<td>Welcome Recap</td>
<td>Jeff Marti</td>
<td>8:30-8:45</td>
</tr>
<tr>
<td>WCB Legislative Training</td>
<td>Carrie Sessions, Legislative Analyst</td>
<td>8:45-9:30</td>
</tr>
<tr>
<td>Processing applications: receipt of applications</td>
<td>Herm Spangle, Eastern Region Office, Permit Writer</td>
<td>9:30-10:10</td>
</tr>
<tr>
<td>Processing applications: application accepted</td>
<td>Herm Spangle, Eastern Region Office, Permit Writer</td>
<td>10:10-10:50</td>
</tr>
<tr>
<td><strong>BREAK</strong></td>
<td></td>
<td>10:50-11:05</td>
</tr>
<tr>
<td>Water Right Special Circumstances</td>
<td>Buck Smith, Northwest Region Office, Hydrogeologist</td>
<td>11:05-11:45</td>
</tr>
<tr>
<td>Board Member Breakout Lunch</td>
<td></td>
<td>11:45-12:25</td>
</tr>
<tr>
<td>Writing a report of examination</td>
<td>Scott Turner, Permit Unit Supervisor, Central Region Office Water Resources</td>
<td>12:25-1:10</td>
</tr>
<tr>
<td>Process and timelines for Ecology, Review of ROD/ROE</td>
<td>Scott Turner, Permit Unit Supervisor, Central Region Office Water Resources</td>
<td>1:10-1:40</td>
</tr>
<tr>
<td>Faulty ROE Exercise</td>
<td>Herm Spangle, Eastern Region Office, Permit Writer</td>
<td>1:40-2:10</td>
</tr>
<tr>
<td>Evaluations and Wrap Up</td>
<td></td>
<td>2:10-2:30</td>
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**Note:** The material in the 2020 Notebook is intended to provide reference and note taking space. On the “Information for Board Members” Web site you will find links to all materials needed for this training including links to RCWs, WACs and SEPA documents. Please become very familiar with the WCB web-site: [https://ecology.wa.gov/About-us/Our-role-in-the-community/Partnerships-committees/Water-Conservancy-Boards](https://ecology.wa.gov/About-us/Our-role-in-the-community/Partnerships-committees/Water-Conservancy-Boards)

First time conservancy board members are required to watch the online YouTube training videos scheduled for discussion in this training, in advance of the training. These viewings will count for 8 hours of your required 32 hours of training. Trainers (some of whom recorded the videos will be available, either on-site or by phone, to lead discussions and answer questions on the training videos. See the Our training modules at the Information for Board Members Web site: [https://ecology.wa.gov/About-us/Our-role-in-the-community/Partnerships-committees/Water-Conservancy-Boards](https://ecology.wa.gov/About-us/Our-role-in-the-community/Partnerships-committees/Water-Conservancy-Boards)
Conservancy Board Training
Water resources common terms, definitions, & acronyms

Buck Smith
Senior Hydrogeologist
Northwest Regional Office
Ecology’s Regional Offices
(arranged by county)
62 Water Resource Inventory Areas (WRIA)
What is a Water Right? (Them’s Fighting Words!)

Discussing Water Rights, a Western Pastime
What is a Water Right?

A right to use a public water source in reasonable quantities from a certain point(s) for a beneficial purpose within a defined place of use during a certain period of use.

You own the “right” to use water, but not the water itself. It is a “Usufructuary” right.
Source

- **Surface Water** – A lake, stream, creek, river, ditch, pond, etc.
- **Groundwater** – Typically a well, but on occasion may be a spring (where the water has not yet reached the atmosphere), or an infiltration trench
- **Reservoir** – An impoundment that stores water
Quantities (Qi & Qa)

Qi – **Instantaneous Quantity** (rate)
- For surface water – measured in **cubic feet per second** (cfs)
- For groundwater – measured in **gallons per minute** (gpm)

Qa – **Annual Quantity** (volume)
- Always measured in **acre-feet per year** (preferred is ac-ft/yr)…(afy, AFY, af/yr)
Quantity Conversions

- One cubic foot (cf) = 7.48 gallons
- One cubic foot per second (cfs) = 448.8 gallons per minute
- One acre-foot (ac-ft) = 325,851 gallons (≈ a football field one foot deep)
- One million gallons (MGD) = 3.07 ac-ft
Point of Diversion (POD) or Point of Withdrawal (POW)

- Surface Water – It is the legal description (¼ ¼, Section, Township, Range) of the Point of Diversion (POD)
- Groundwater – It is the legal description (¼ ¼, Section, Township, Range) of the Point of Withdrawal (POW)
Purpose(s) of Use

Municipal supply, group domestic, single domestic, irrigation, mining, stockwatering, hydropower, industrial, forest practices, fish propagation, snow-making, beautification, instream flow, mitigation, dust control, etc.

Multiple purposes of use are allowed.
Place of Use (POU)

- The legal description of the property where the water is to be used
- Except municipal supply – then it is the area described (the service area) in the system’s latest water system plan that has been approved by the Washington State Department of Health
Period of Use

• Many uses are year-round

• Irrigation is typically listed by months (April – October, May – September, etc.) or it may just say “Irrigation Season”

• Other uses (snow-making, instream flow, hatcheries, frost-protection, mitigation, etc.) may list specific time periods
Priority Date

• For state-issued water rights, this is the date the permitting agency received the completed application

• It establishes the relative seniority against other water rights within the water source

• First in Time…First in Right!
Steps to Establish a Water Right

- **Application** - Establishes the applicant’s intent to appropriate and their priority date.
Steps to Establish a Water Right

- **Report of Examination (ROE)** - Details the findings for an approval or denial
Steps to Establish a Water Right

- Permit - Authorization to develop a right
Steps to Establish a Water Right

- **Certificate** - Final step...the right is perfected
Pre-Code Water Rights

- Surface Water Code (chapter 90.03 RCW) passed in 1917
- Ground Water Code (chapter 90.44 RCW) passed in 1945
- Rights established pre-code must be memorialized by a Water Right Claim
- Use caution when evaluating a change application for a claim
Pre-Code Water Rights
Permit Exempt Uses

RCW 90.44.050...any withdrawal of public groundwater for:

- Stock-watering purposes (no limit)
- Watering of a lawn or of a noncommercial garden not exceeding 1/2 acre in area
- Single or group domestic uses not exceeding 5000 gallons a day
- Industrial purposes not exceeding 5000 gallons a day
Common Terms & Definitions

- **Statute** - A law created by the Legislature. A statute is listed in the Revised Codes of Washington (RCW) by chapter number.

- **Rule** - A law created by an agency. A rule is listed in the Washington Administrative Code (WAC) by chapter number.

- **Policy** - Not a law, it is “what” we do.

- **Procedure** - Not a law; it is “how” we do it.
Common Terms & Definitions

• **Riparian Doctrine** – A right to use water that abuts or is contained within land ownership. The water is shared equally with other riparian users.

• **Prior Appropriation Doctrine** – Based upon actual use of water and priority date. First in time, first in right. This is the basis for our permitting system.
Common Terms & Definitions

• **Change Application** – Filed with Ecology or a Conservancy Board to change one or more attributes of a right (POD, POU, etc.)
• **Extent & Validity** – Investigation to determine if the right is valid and what Qi & Qa are eligible to be changed
• **Perfection** – Water put to beneficial use
• **Inchoate** – Water that has not been put to beneficial use (Paper Water)
Common Terms & Definitions

• **Tentative Determination** – The Ecology or Conservancy Board findings on the extent & validity of the right to be changed.

• **Adjudication** – Superior Court action to make a **Final Determination** of the extent, validity, and priority of water rights within a basin or basins.
Common Acronyms

- **ACQ** – Annual consumptive quantity
- **ASR** – Aquifer storage & recovery
- **CELP** – Center for Environmental Law & Policy
- **CREP** – Conservation Resource Enhancement Program (run by the USDA)
- **DFD** – Determined Future Development
- **EIS** – Environmental Impact Statement
Common Acronyms

- **ESA** – Endangered Species Act
- **GWIS** – Geographic Water Right Information System
- **IRPP** – Instream Resource Protection Plan
- **ISF** – Instream flow
- **MISF** – Minimum Instream Flow
- **MWL** – Municipal Water Law (2003 law)
Common Acronyms

- **OCPI** – Overriding Considerations of the Public Interest
- **ROD** – Record of Decision by a Conservancy Board
- **SEPA** – State Environmental Policy Act
- **TRS** – Township, Range, Section
- **WCB** – Water Conservancy Board
- **WRTS** – Water Right Tracking System
The starting point for the survey system is the intersection of the Willamette Meridian and the Base Line, just west of Portland, Oregon.
Township and Range

Township is the measure of units north or south of the base line. Range is the measure of units east or west of the meridian. Each unit is typically six miles.

For example, here the city of Enumclaw is in Township 20 North, Range 6 East (or T. 20 N., R. 6 E. for short).
With the instruments available in the 19th century, the survey was unable to create a perfect grid pattern, especially in the mountains. Therefore, the pattern is somewhat distorted in places.
The word *township* is a measure of units north or south of the baseline, but it is also the term for each square on the grid. The township is further divided into 36 sections, each a single square mile.

For example, if this is the same township that Enumclaw occupies, then the dark square at left is *Section 29, Township 20 North, Range 6 East, W.M.* (Sec. 29, T. 20 N., R.6.E.).
Section Divisions (¼, ¼ ¼, etc.)
Section Divisions - The Test!
Questions?

Buck Smith
Northwest Regional Office

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425-649-7147

Water Resources Program
Welcome to the Water Rights World
Ben Carr, CRO Water Conservancy Board Coordinator
February 22, 2021
Ecology’s vision and mission

**Our Mission**
To protect, preserve, and enhance Washington’s environment for current and future generations.

**Our Vision**
Our innovative partnerships protect and sustain healthy land, air, and water in harmony with a strong economy.
Ecology’s strategic priorities

- Support and engage our communities, customers, and employees
- Reduce and prepare for climate impacts
- Prevent and reduce toxic threats and pollution
- Protect and manage our state's waters
- Protect and restore Puget Sound
Thank you!
Presentation Outline

• History of Water Conservancy Boards.
• Authorizing Statute and Rule.
• Organization and Structure.
• Jurisdiction.
• Record of Decision and Report of Examination
• Reports to Ecology
I will reference the Training Notebook.
History of Water Right Processing

Late 1980s/Early 1990s
Increased volume of applications and demand for remaining resources.

1993
WA Legislature cuts permitting by 63%, establishes Trust Water Right Program.

1997
Water Conservancy Boards are created. Chapter 90.80 RCW

2000
Cost Reimbursement

Hillis v. Ecology
A quest to reduce gridlock

• The legislature chose you to expedite changes and transfers of existing water rights.
The go-to: Chapter 90.80 RCW and 173-153 WAC

Water Conservancy Boards (WCBs) Authorizing Statute and Rule:

- **Chapter 90.80 RCW** (Page 6-17)
- **Chapter 173-153 WAC** (Page 17-51)
Why are you here?

- Findings in RCW 90.80.005 (see page 6 on the WCB Notebook).
Definitions for WCB terms.

All of these are in RCW 90.80.010 on Page 7.

• Alternate.
• Commissioner.
• Department.
• Director.
• Record of decision.
• Transfer.
Check out WCB creation process.

- RCW 90.80.020 through 90.80.035 (Page 7-9)
- WAC 173-153-040 (Page 20-22)
A Board is separate unit of local government, made up of volunteers.

- RCW 90.80.050 (Page 9)
What are the training requirements for Board members?
What is a quorum?

• RCW 90.80.057 (Page 11)
Alternates are key to have a quorum.

- RCW 90.80.010 defines the alternate (Page 7).
- RCW 90.80.050(3) (Page 10).
- RCW 90.80.070(6)-(8) (Page 14).
What about the Board’s expenses?

- RCW 90.80.050(4) (Page 10)
- RCW 90.80.060 (Page 12)
Questions?
Presentation Outline

• History of Water Conservancy Boards.
• Authorizing Statute and Rule.
• Organization and Structure.
• Jurisdiction.
• Record of Decision and Report of Examination
• Reports to Ecology
Where does my Board have jurisdiction?

Image credit: washingtontribes.org
Where does my Board have jurisdiction?

Image credit: countymapsofWashington.com
What is required in the Board’s investigation?

• RCW 90.80.070 (Page 12-14)
• WAC 173-153-130 (Page 42-44)
Record of decision (ROD)

ROD on page 286
Report of Examination (ROE)

ROE on pages 287-296
How is the Board’s decision transferred to Ecology?

- RCW 90.80.080 (Page 14-15)
- WAC 173-153-140 (Page 44-46)
Sound complicated? We are here to help you.

Image credit: Laura Seabrook on Deviantart.com
Sound complicated? We are here to help you.

• Technical Assistance can be requested.
  • RCW 90.80.055(d) (Page 11).
  • WAC 173-153-120 (Page 41-42).
Statewide: Jeff Marti
Southwest: Tammy Hall
Northwest: No Boards
Central: Ben Carr
Eastern: Herm Spangle
Be aware of conflicts of interest.

- RCW 90.80.120 (Page 15-16)
- WAC 173-153-100 (Page 39)
A Board is open to the public.

RCW 90.80.130 and 90.80.135 (Page 16)
- Open Public Meetings Act (Chapter 42.32 RCW, Page 80-115)
- Public Records Act (Chapter 42.56 RCW, Page 80, 116-196)
Every Board has bylaws which guide their operations.

• Know your Board’s bylaws.
• Examples and suggestions for by-laws are located on Pages 52-59.
At the end of October, every Board submits an annual report to Ecology.

- Board activities.
- Board operations and membership changes.
- Example form on Page 299-300.
Thank you

benjamin.carr@ecy.wa.gov
Desk: 509-457-7112
Cell: 509-490-1936
The Public Records Act and Open Public Meetings Act

February 2021
Prepared by Washington State Attorney General’s Office
Two Different Laws

Open Public Records

RCW 42.56
Public Records Act
(PRA)

Open Public Meetings

RCW 42.30
Open Public Meetings Act
(OPMA)
Requirements

OPEN PUBLIC RECORDS

• Records are open unless there is an exemption authorized by law.
• PRA passed via Initiative 276 in 1972.
• Applies to all public agencies, state and local.
• Does not apply to courts.
• Limited application to Legislature.
• Applies to “public records.”

OPEN PUBLIC MEETINGS

Requires meetings of governing body to be open gavel-to-gavel, unless there is an exception authorized by law.

• OPMA passed in 1971.
• Applies to all multimember public agency boards and commission governing bodies, and their committees.
• Does not apply to courts.
• Does not apply to Legislature.
Public Records Act
Touchstone:

- Public records of government agencies are presumed open.
- Non-exempt public records must be disclosed.
- Records or information in records can be withheld only if law allows. Exemptions are “narrowly construed.”
- Location does not matter. Public records can be located in/on agency files/accounts/servers, or non-agency files/accounts/servers.
- Public records must be retained pursuant to records retention laws (RCW 40.14).
“Public Records” are State Property

RCW 40.14.020: “All public records shall be and remain the property of the state of Washington. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, only in accordance with the provisions of this chapter.”

- They are not your records, even if you created them, and even if they are on/in your personal devices/accounts/files.
- You are required to manage and dispose them only in accordance with state law.
“Public Record” – PRA (RCW 42.56)

“Public record” means:

• any writing
• containing information
• relating to
• the conduct of government or
• the performance of any governmental or proprietary function
• prepared, owned, used, or retained
• by any state or local agency
• regardless of physical form or characteristics.”

~ RCW 42.56.010
Writing

- “Writing” includes “handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.”

~ RCW 42.56.010

- So, “public record” is broadly defined.
AGO “Public Record” PRA Handout

When is a “Writing” a “Public Record” under the Public Records Act?


1. Does the writing contain information relating to the conduct of government or the performance of any governmental or proprietary function of a state or local agency?
   - If YES, proceed to Question # 2
   - If NO, STOP. Not a public record.

2. Is the writing a certain record held by a qualified volunteer?
   - (See volunteer exception criteria on reverse.)
   - If YES, STOP. Not a public record.
   - If NO, proceed to Question # 3

3. Was the writing prepared, owned, used or retained by the state or local agency?
   - If YES, is a public record.
   - If NO, consider other reasonable locations. Go to (c).
   - If uncertain about record’s preparation, use, ownership or retention, or to determine if the answer is “no,” ask (a), (b) & (c).
   - The (a) – (c) analysis may be fact-specific. Additional analysis might be appropriate in a particular situation.

(a) Is the writing located in/on the state or local AGENCY’S files, servers, accounts, devices?
   - If YES, is a public record.
   - If NO, consider other places where records are reasonably likely to be located. Go to (b) & (c).

(b) Is the writing located in/on AGENCY EMPLOYEES’ OR OFFICIALS’ PERSONAL (non-agency) files, servers, accounts, devices?
   - If YES, did the employee or official prepare the writing in his/her public employment or official capacity? (Was the writing “related” to the employee/official’s public responsibilities?) Ask ALL THREE questions below - (i) through (iii). (Fact-specific)
   - (i) Did the job require the writing? OR
   - (ii) Did the employer direct the writing? OR
   - (iii) Did the writing further the employer’s interests? (Must be more than a mere reference, mention or comment about the employee’s or official’s public duties.)
   - If (i), (ii) or (iii) are YES, is a public record.
   - If ALL are NO, STOP. Not a public record.

(c) Is the writing located in/on THIRD PARTY’S files, servers, accounts, devices? (Third party = non-agency entities performing functions for the agency – e.g. contractors/consultants)
   - If YES, did the agency prepare, own, or use the writing? Or
   - (i) Does only the third party retain the writing but the writing involves the contract work &/or has a nexus to agency’s decision process? (Fact-specific – more analysis may be needed)
   - If YES, is the third party the “functional equivalent” of a public agency/public employee? (Fact-specific – see “Telford Test”)
   - If NO, STOP. Not a public record.
   - If any YES, is a public record.
   - If NO, STOP. Not a public record.
What does the agency need to do?

- Manage, maintain, organize records
- Accept and respond to public records requests
- Work / communicate with requesters
- Search for records
- Gather the records
- Review the records for exemptions to disclosure
- Produce the records
What do I need to do?

- Manage, maintain, organize your records
- Review public records requests
- **Search** for records
- Review the records for exemptions to disclosure
Searches - Generally

- Agency must conduct an **adequate search**
- Search should be **reasonably calculated** to uncover responsive records
- Must **follow obvious leads** to possible locations where records are likely to be found.
- If responsive public records are on or in employees’ **personal devices, personal accounts, or personal files**, those must be searched, too.
- The focal point of the judicial inquiry is the agency’s search process, not the outcome of the search.
- The **agency bears the burden of proof** to show the adequacy of the search.

~ RCW 42.56.520; Neighborhood Alliance of Spokane v. Spokane County; Hobbs v. State; Block v. City of Gold Bar; Nissen v. Pierce County.
Using Personal Devices/Accounts for Agency Business

“Public records” include records of agency business when they are created or retained by agency employees or officials on home computers or devices, or in non-agency devices, email accounts or files.

Those records must be preserved, searched and produced, like other public records.
Privacy

Question: Do you have a “privacy” right in public records in/on non-agency accounts/devices?

- There is no general “privacy” exemption in the PRA.
- If privacy is an express element of another exemption, privacy is invaded only if disclosure about the person would be:
  1. “Highly offensive to the reasonable person” and
  2. “Not of legitimate concern to the public.”

~ RCW 42.56.050

This means that if information does not satisfy both these factors, it cannot be withheld as “private” information under other statutes. (Pending: State Supreme Court case involving constitutional privacy.)
Exemptions

- An exemption must exist in law (state or federal; PRA or other laws).

- A public record cannot be withheld based only on a (your) promise of confidentiality.

- An agency must, in writing, cite the exemption for the requester and provide a brief explanation. No “silent withholding.”

- Exemptions are narrowly construed. Agency can lawfully withhold only exempt information that fits squarely within an exemption, must release other information.

- Requesters can go to court to challenge exemptions cited by an agency. If agency is incorrect, the court can award civil penalties.
PRA in the News

Wapato Agrees to $130,000 in Payouts for Records Requests
Feb. 4, 2019, at 9:11 a.m.

Court tags Tacoma police with $1.77M for withholding records
Decision: The city withheld 546 pages from former officer
By Sean Robinson, The News Tribune
Published: February 8, 2019, 7:24 PM

Withholding public records costs Port of Tacoma $159,000; judge makes finding of gross negligence

Spokane County settles lawsuit over public records violation
By: Jeff Humphrey
Posted: Oct 14, 2015 02:24 PM PDT  Updated: Nov 20, 2016 08:08 PM PST
Open Public Meetings Act
OPMA Applies To:

Multi-member public state and local agencies, such as boards and commissions, as follows:

- Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature.
- Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of Washington.
- Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies.
- Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

~ RCW 42.30.020
Governing Body

All meetings of the **governing body** of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in RCW 42.30.

~ *RCW 42.30.030*
What is a Governing Body?

The multimember board or other policy or rule-making body

OR

Any committee of such public agency when:
- the committee acts on behalf of the governing body,
- conducts hearings, or
- takes testimony or public comment

~ RCW 42.30.020
What is a Meeting?

“Meeting” means meetings at which the public agency takes “action” ~ RCW 42.30.020

- “Action” means the transaction of the official business of the public agency and includes but is not limited to:
  - Public testimony
  - All deliberations
  - Discussions
  - Considerations
  - Reviews
  - Evaluations
  - Final actions

The requirements of the OPMA are triggered whether or not “final” action is taken. See upcoming slide on “final action.”

A “meeting” of a governing body occurs when a majority of its members (quorum) gathers with the collective intent of transacting the governing body’s business.

~ Citizens Alliance for Property Rights Legal Fund v. San Juan County
“Meeting” (Cont.)

Physical presence not required – a meeting can occur by phone or email.

An exchange of e-mail could constitute a meeting if, for example, a quorum of the members participate in the e-mail exchange & discuss agency business. Simply receiving information without comment is not a meeting.

~ Wood v. Battle Ground School District; Citizens Alliance for Property Rights Legal Fund v. San Juan County

Does not need to be titled “meeting” – OPMA also applies to “retreats,” “workshops,” “study sessions,” etc.

No meeting occurs if the governing body lacks a quorum.
“Regular” Meetings

“Regular meetings” are recurring meetings held in accordance with a periodic schedule by ordinance, resolution, bylaws or other rule.

A state public agency must:

◦ Yearly, file with Code Reviser a schedule of regular meetings, including time and place
◦ Publish changes to regular meeting schedule in state register at least 20 days prior to rescheduled date

~ RCW 42.30.070; RCW 42.30.075; RCW 42.30.077
“Special” Meetings

A “special meeting” is a meeting that is not a regular meeting (not a regularly scheduled meeting).

Called by presiding officer or majority of the members

Notice - timing: 24 hours before the special meeting, written notice must be:

- Given to each member of the governing body (unless waived)
- Given to each local newspaper of general circulation, radio, and TV station which has a notice request on file
- Posted on the agency’s website [with certain exceptions in RCW 42.30.080(2)(b), for example, if the agency does not have a website]
- Prominently displayed at the main entrance of the agency’s principal location and the meeting site (if not that same location)

~ RCW 42.30.080
Public Attendance

A public agency can’t place conditions on public to attend meeting subject to OPMA:

- For proceedings governed by OPMA, cannot require people to register their names or other information, complete a questionnaire, or otherwise fulfill any condition precedent to attendance

  ~ RCW 42.30.040

Reasonable rules of conduct can be set

Cameras and tape recorders are permitted unless disruptive

  ~ AGO 1998 No. 15

No “public comment” period required by OPMA
Interruptions and Disruptions

The OPMA provides a procedure for dealing with situations where a meeting is being interrupted so the orderly conduct of the meeting is unfeasible, and order cannot be restored by removal of the disruptive persons.

Meeting room can be cleared and meeting can continue, or meeting can be moved to another location, but final disposition can occur only on matters appearing on the agenda. More details set out in the

~ RCW 42.30.050
Executive Session

Part of a regular or special meeting that is closed to the public

Limited to specific purposes set out in the OPMA

Purpose of the executive session and the time it will end must be announced by the presiding officer before it begins; time may be extended by further announcement

~ RCW 42.30.110
Executive Sessions
Specified purposes set out in OPMA. Includes, for example:

National security

Real estate
- Site selection or acquisition of real estate
  - Lease or purchase
  - Public knowledge would likely increase price
- Sale or lease
  - Public knowledge would likely decrease price
  - Final action selling or leasing public property must be taken at open meeting

Publicly bid contracts
- Review negotiations on performance
- Public knowledge would like increase costs

Evaluate qualifications of applicant for public employment

Meet with legal counsel regarding enforcement actions, litigation or potential litigation

Other purposes listed in RCW 42.30.110

~ RCW 42.30.110
Penalties for Violating the OPMA

A court can impose a $500 civil penalty against each member (personal liability) who knowingly attends a meeting in violation of OPMA; and $1000 for a subsequent knowing violation.

Court will award costs and attorney fees to a successful party seeking the remedy

Action taken at meeting can be declared null and void

~ RCW 42.30.120; RCW 42.30.130; RCW 42.30.060
THANK YOU
BARS Reporting
Water Conservancy Boards

Andrew M. Wolf, Assistant State Auditor
Team Local Government Support (LGS)

February 23, 2021
SAO Website

www.sao.wa.gov
Local government accounting—Uniform system of accounting

The state auditor shall formulate, prescribe, and install a system of accounting and reporting for all local governments, which shall be uniform for every public institution, and every public office, and every public account of the same class.

The system shall exhibit true accounts and detailed statements of funds collected, received, and expended for account of the public for any purpose whatever, and by all public officers, employees, or other persons.

The accounts shall show the receipt, use, and disposition of all public property, and the income, if any, derived there from; all sources of public income, and the amounts due and received from each source; all receipts, vouchers, and other documents kept, or required to be kept, necessary to isolate and prove the validity of every transaction; all statements and reports made or required to be made, for the internal administration of the office to which they pertain; and all reports published or required to be published, for the information of the people regarding any and all details of the financial administration of public affairs.
Local Government Accounting – Annual Reports – Comparative Statistics

The state auditor shall require from every local government financial reports covering the full period of each fiscal year, in accordance with the forms and methods prescribed by the state auditor, which shall be uniform for all accounts of the same class.

Such reports shall be prepared, certified, and filed with the state auditor within one hundred fifty days after the close of each fiscal year.

The reports shall contain accurate statements, in summarized form, of all collections made, or receipts received, by the officers from all sources; all accounts due the public treasury, but not collected; and all expenditures for every purpose, and by what authority authorized; and also: (1) A statement of all costs of ownership and operation, and of all income, of each and every public service industry owned and operated by a local government; (2) a statement of the entire public debt of every local government, to which power has been delegated by the state to create a public debt, showing the purpose for which each item of the debt was created, and the provisions made for the payment thereof; (3) a classified statement of all receipts and expenditures by any public institution; and (4) a statement of all expenditures for labor relations consultants, with the identification of each consultant, compensation, and the terms and conditions of each agreement or arrangement; together with such other information as may be required by the state auditor.

The reports shall be certified as to their correctness by the state auditor, the state auditor's deputies, or other person legally authorized to make such certification.

Their substance shall be published in an annual volume of comparative statistics at the expense of the state as a public document.
Cities, Counties and Special Purpose Districts (Cash Basis)

The annual report for the fiscal year ended December 31, 2018 is required by Thursday, May 30, 2019 (RCW 43.09.230).

The BARS Manual directs accounting and reporting standards for local governments in accordance with RCW 43.09.200. Its purpose is to provide (1) uniform accounting and financial reporting to allow for meaningful use and comparison of financial data; (2) accounting and reporting instructions as a resource for local government managers; and (3) a consistent framework for financial reporting to
Cities, Counties and Special Purpose Districts (Cash Basis)


Please note that the deadline falls on a Sunday over Memorial Day weekend and we will not have staff available to assist with filing questions. We recommend local governments begin filing their report early to allow adequate time for questions.

The BARS Manual directs accounting and reporting standards for local governments in accordance with RCW 43.09.200. Its purpose is to provide (1) uniform accounting and financial reporting to allow for meaningful use and comparison of financial data; (2) accounting and reporting instructions as a resource for local government managers; and (3) a consistent framework for financial reporting to intended users, including managers, governing bodies, granting and regulatory agencies, the state Legislature, and the general public.
Cities, Counties and Special Purpose Districts (Cash Basis)


Please note that the deadline falls on a Sunday over Memorial Day weekend and we will not have staff available to assist with filing questions. We recommend local governments begin filing their report early to allow adequate time for questions.

The BARS Manual directs accounting and reporting standards for local governments in accordance with RCW 43.69.200. Its purpose is to provide (1) uniform accounting and financial reporting to allow for meaningful use and comparison of financial data; (2) accounting and reporting instructions as a resource for local government managers; and (3) a consistent framework for financial reporting to
Cities, Counties and Special Purpose Districts (Cash Basis)


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MyBARS

BARS Cash Manual

Cities, Counties and Special Purpose Districts (Cash Basis)

Sign in with one of these accounts
- Active Directory
- Secure Access Washington

Help Desk

Logged into MyBars: Andrew Wolf (SAOawolf)
Log out

How to Use MyBARS
My Cash Saved Sections
My Cash Saved Notes
Switch to the GAAP Manual

Charts of Accounts
Budgeting
Accounting
Reporting
Table of Contents
Alerts & Changes
BARS Account Export

Select a government type/Select basis of accounting

This government type selection will limit the accounts to those applicable to the selected government type. Although the listing provided intends to be all inclusive, it is possible that needed account codes will not be included. If this occurs, please use the All option to view the entire chart of accounts and contact LQCSFeedback@sao.wa.gov so the listing can be updated.

GOVERNMENT TYPE

- Water Conservancy Board

BASIS FOR ACCOUNTING

- Cash Basis

SELECT EXPORT TYPE

- EXCEL
- PDF

SELECT A REPORTING LEVEL

- Prescribed only

DOWNLOAD BARS ACCOUNTS
### Reporting Requirements - Schedules

#### Reporting Requirements and Filing Instructions for Special Purpose Districts

#### Special Purpose Districts

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<thead>
<tr>
<th>Statements and Schedules</th>
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<th>With annual revenue of less than $2 million</th>
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Schedule 01 – Revenues/Expenditures

BARS Reporting Templates

The Microsoft Word and Excel templates provided on this page are designed to help local governments with different aspects of their accounting and financial reporting. The templates should be used in conjunction with the appropriate BARS Manuals, which contain additional information and instructions for the preparation of the financial reports.

Forms and Other Resources
- Annual Report Submissions Page (Note: Requires SAW login)
- BARS and Annual Report Filing FAQ
- Cash Basis BARS Manual Notes to Financial Statements
- Certification (Note: A digital signature/certification is included as part of the standard Online Filing System steps)
- Educational Service District (ESD) FY2020 Notes to the Financial Statements Template
- Online Filing Flag Descriptions Guide (New)

Schedules
Schedule 01

The BARS codes listed in the templates are the most commonly used codes. A complete list of BARS codes are available in the Charts of Accounts: GAAP BARS Account Export or Cash BARS Account Export.

Note: As of FY2020, Cash-basis Schedule 01 templates received for prior-year reports (FY2019 and earlier). For more information, please email LGCS@bar.com. For assistance with filing a prior report, please consult LGCS.

- Transportation Authority (Cash) (GAAP)
- Transportation Benefit District (Cash) (GAAP)
- TV Reception District (Cash)
- Water Conservancy Board (Cash)
- Water/Sewer District (Cash) (GAAP)

Other Schedules
## Schedule 01 – Revenues/Expenditures

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
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<td><strong>B</strong></td>
<td><strong>C</strong></td>
<td><strong>D</strong></td>
<td><strong>E</strong></td>
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<td>Operations</td>
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<td>Assigned Cash and Investments - Ending</td>
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</table>
Submit Annual Report

Schedule 21 Risk Management

Answer the following questions to determine if your local government self-insures for property and liability, health and welfare, unemployment compensation, workers' compensation or other risks.

For additional instructions on this step, click on the video icon.

How do you insure property and liability risks, if at all?
- Formal or informal self-insurance program/activity for some or all perils/risks
- Belong to a public entity risk pool
- Purchase private insurance
- Retain risk internally without formal or informal self-insurance program/activity

How do you provide health and welfare insurance (ex: medical, dental, prescription drug, and/or vision benefits) to employees, if at all?
- Self-insure for some or all benefits
- Belong to a public entity risk pool
- All benefits are provided by a health insurance company or HMO
- Not applicable - no such benefits offered
Schedule 22

Schedules Designed for Online Filing:
The following are current templates used for online filing. During the filing process users will have an opportunity to print/save a final version of the schedules in the format prescribed in the BARS Manuals.

Select prior-year templates (including pension/OPEB) can be found here.

- 09 – Liabilities
- 15 – Schedule of State Financial Assistance
- 16 (as of FY2020) – Schedule of Expenditures of Federal Awards (SEFA) now with a COVID-19 expenditures field!
- 16 Notes – Notes to the Schedule of Expenditures of Federal Awards (Non-schools; required addendum to Schedule 16 – Schedule of Expenditures of Federal Awards [SEFA]. Schools should use the template provided by OSPI.)
- 22 – Schedule 22 is a Web-based form and is available within the Online Filing application (portal); login required. For additional information/assistance, see Schedule 22 Guidance.
Training and Workshops

Filing training and other resources

The State Auditor’s Office (SAO) provides training to local government staff to help them file their annual report, and works with partners to provide classes in finance, budgeting, accounting, reporting and other relevant fields.

Quick Links
- SAO Roadshow
- Annual Filing Workshops
- eLearnings
- In Person Trainings

SAO Roadshow
Due to the COVID-19 pandemic, the annual fall roadshows have been cancelled. The 2nd Annual BARS Update webinars will continue and information can be found in the eLearnings section below.
Additional Info and Troubleshooting
Forms and Other Resources

- Annual Report Submissions Page (Note: Requires SAW login)
- BARS and Annual Report Filing FAQ
- Cash Basis BARS Manual Notes to Financial Statements
- Certification (Note: A digital signature/certification is required for the certification)
- Educational Service District (ESD) FY2020 Notes to the Financial Statements

- Online Filing Flag Descriptions Guide (New!)

LGCSfeedback@sao.wa.gov
Financial Data

Welcome to FIT!

Our goal is to make Washington State’s public financial data transparent and easy-to-use -- for everyone. Start exploring the data by selecting a menu item on the left...

Where does the money come from?

Where does the money go?
Financial Intelligence Tool (FIT)
### Total Financial Summary, 2016-2019

<table>
<thead>
<tr>
<th></th>
<th>~2016</th>
<th>~2017</th>
<th>~2018</th>
<th>~2019</th>
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<td><strong>Proprietary</strong></td>
<td><strong>Proprietary</strong></td>
<td><strong>Proprietary</strong></td>
<td><strong>Proprietary</strong></td>
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<tr>
<td><strong>Beginning Balances Total</strong></td>
<td>$103,119</td>
<td>$103,119</td>
<td>$172,142</td>
<td>$144,773</td>
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<tr>
<td><strong>Beginning Balances</strong></td>
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<td>$103,119</td>
<td>$172,142</td>
<td>$144,773</td>
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<tr>
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<td>$60,212</td>
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<td><strong>Charges for Goods and Services</strong></td>
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<td>$81,164</td>
<td>$32,360</td>
<td>$40,840</td>
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<tr>
<td><strong>Miscellaneous Revenues</strong></td>
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<td>$48</td>
<td>$105</td>
<td>$125</td>
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<td><strong>Other Increases Total</strong></td>
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<td>$1,423</td>
<td>$1,423</td>
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<td><strong>Other Decreases Total</strong></td>
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<td><strong>Other Decreases in Fund Resources</strong></td>
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</tbody>
</table>
The State Auditor’s Office (SAO) helps government work better by providing tools, best practices, checklists and other documents in the Resources Database.

The SAO Government Resources Database is free to use. Access it here:
File the annual report!

Deadline to file for FY2020 is **May 30, 2021!**
Questions
Contact Information

LGCSfeedback@sao.wa.gov

Kayley Pagio
  kayley.pagio@sao.wa.gov
  (564) 999-0924

Andrew M. Wolf
  andrew.wolf@sao.wa.gov
  (564) 999-0928

Website: www.sao.wa.gov
Twitter: @WAStrateAuditor
Facebook: www.facebook.com/WAStrateAuditorsOffice
LinkedIn: Washington State Auditor’s Office
Water Conservancy Board Member and Ecology Responsibilities

Trevor Hutton
Water Resources Program
Member Responsibilities

• Initial Training
  – RCW 90.80.040
    – The director of the department may, as deemed necessary by the director, adopt rules in accordance with chapter 34.05 RCW necessary to carry out this chapter, including minimum requirements for the training and continuing education of commissioners. Training courses for commissioners shall include an overview of state water law and hydrology. Prior to commissioners taking action on proposed water right transfers, the commissioners shall comply with training requirements that include state water law and hydrology.
Member Responsibilities

• Initial Training
  – WAC 173-153-050
    • Before participating in decisions
    • Within one year of appointment
    • Not more than one year prior to appointment
    • 32 hours, requires demonstration of understanding, tracked by Ecology
    • Certification of completion to the County
Member Responsibilities

• Continued Training
  – WAC 173-153-050
    • 8 hours per year required
    • Must be completed before making decisions
    • Other provisions for those serving on more than one Conservancy Board
    • Eligibility of Members is grounds for reversal/appeal
Member Responsibilities

• Continued Training
  – Ecology Offered
  – External Training
    • Must be approved by Ecology
    • Must be reasonable and appropriate substitutions relevant to the topic
    • Does not generally include time spent in appeals, personal presentations, or direct responsibilities of the Board
Member Responsibilities

• Conflict of Interest
  – RCW 90.80.120

(1) A commissioner of a water conservancy board shall not engage in any act which is in conflict with the proper discharge of the official duties of a commissioner. A commissioner is deemed to have a conflict of interest if he or she:

  (a) Has an ownership interest in a water right subject to an application for approval before the board;

  (b) Receives or has a financial interest in an application submitted to the board or a project, development, or venture related to the approval of the application; or

  (c) Solicits, accepts, or seeks anything of economic value as a gift, gratuity, or favor from any person, firm, or corporation involved in the application.
Member Responsibilities

• Conflict of Interest
  – RCW 90.80.120

(2) In the event of a recusal of an appointed commissioner, an alternate may serve as a commissioner on a board and may act upon the official board business for which the conflict of interest exists.
Member Responsibilities

- Conflict of Interest
  - RCW 90.80.120

(3) The department shall return a record of decision to a conservancy board without action where the department determines that any member of a board has violated subsection (1) of this section.

(a) If a person seeking to rely on this section to disqualify a commissioner knows of the basis for disqualification before the time the board issues a record of decision, the person must request the board to have the commissioner recuse himself or herself from further involvement in processing the application, or be barred from later raising that challenge.

(b) If the commissioner does not recuse himself or herself or if the person becomes aware of the basis for disqualification after the board issues a record of decision but within the time period under RCW 90.80.080(3) for filing objections with the department, the person must raise the challenge with the department. If the department determines that the commissioner should be disqualified under this section, the director must remand the record of decision to the board for reconsideration and resubmission of a record of decision. The disqualified commissioner shall not participate in any further board review of the application. The department's decision on whether to remand a record of decision under this section may only be appealed at the same time and in the same manner as an appeal of the department's decision to affirm, modify, or reverse the record of decision after remand.

(c) If the person becomes aware of the basis for disqualification after the time for filing objections with the department, the person may raise the challenge in an appeal of the department's final decision under RCW 90.80.090.
Member Responsibilities

• Communication
  – Ecology encourages boards to seek technical assistance
  – Advanced discussion from the Board
  – Updates on member transitions, eligibility, etc.
  – Coordination of efforts
  – Filing/declining/withdrawing applications
Member Responsibilities

• You are a Public Servant
  – RCW 90.80.050(1)
  – Boards are an appointed body of the County legislative authority
  – Subject to Open Public Meetings Act
  – Subject to Public Records Act
Member Responsibilities

• Coordinate extension/resignation of appointment with County
  – WAC 173-153-042(8)-(10)
  – Resign by letter to County with copy to Ecology’s WCB coordinator
  – Board must notify County of the vacancy
  – County conducts process to fill vacancy
Ecology Responsibilities

• Director’s final approval to establish a Water Conservancy Board
  – RCW 90.80.030(2)
  – (2) The director shall approve or deny the creation of a board within forty-five days after the county legislative authority has submitted all information required under subsection (1) of this section. The director must determine whether the creation of the board would further the purposes of this chapter and is in the public interest. The director shall include a description of the necessary training requirements for commissioners in the notice of approval sent to the county legislative authority.
Ecology Responsibilities

• Training
  – WAC 173-153-050
  – Initial 32-hour training
  – Continued training opportunities
  – Maintain records of training and eligibility
Ecology Responsibilities

- Technical Assistance
  - RCW 90.80.055(1)(d)
    - (d) The director shall assign a representative of the department to provide technical assistance to each board. If requested by the board, the representative shall work with the board as it reviews applications for formal acceptance, prepares draft records of decision, and considers other technical or legal factors affecting the board's development of a final record of decision. A board may request and accept additional technical assistance from the department. A board may also request and accept assistance and support from the county government or governments of the county or counties in which it operates.
Ecology Responsibilities

• Posting of Documents to ECY website
  – RCW 90.80.080(2)
  – (2) Upon receipt of a board's record of decision, the department shall promptly post the text of the record of decision transmittal form on the department's internet site. The director shall review each record of decision made by a board for compliance with applicable state water law.
Ecology Responsibilities

• Review of Report of Examination and Record of Decision
  – RCW 90.80.080(2)&(4)
  – The director shall review the record of decision of the board and shall affirm, reverse, or modify the action of the board within forty-five days of receipt. The forty-five day time period may be extended for an additional thirty days by the director or at the request of the board or applicant. If the director fails to act within the prescribed time period, the board’s record of decision becomes the decision of the department and is appealable as provided by RCW 90.80.090. If the director acts within the prescribed time period, the director's decision to affirm, modify, or reverse is appealable as provided by RCW 90.80.090, and the director's decision to remand is appealable as provided by *RCW 90.80.120(2)(b).
Ecology Responsibilities

• Review of Report of Examination and Record of Decision
  – RCW 90.80.080(2) & (4)
  – Affirm, Reverse, or Modify
  – 45 day review period, can extend 30 days
  – No action defaults to Board’s decision
  – All decisions are appealable
WCB Duties

• Provide a Local Resource
• Process the same kinds of transfers as Ecology
  – RCW 90.80.055(1)(a)&(b)
  – Including Trust Water under RCW 90.38 and RCW 90.42 (coordination for banking)
  – Not for within or between irrigation districts without proper process
Questions / Comments?

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Hydrogeology and Water Right Changes

Presented by
Kurt Walker, LHg, LG
Central Regional Office, Washington State Department of Ecology

Slides modified from previous presentations by Ecology staff
Training Objective

- Provide base level understanding of groundwater occurrence and behavior.
- Touch on common hydrogeologic issues considered by Conservancy Boards.
- Make it approachable to a wide audience.

Format

- High level discussion.
- Questions are encouraged.
Hydrogeology 101

- **Aquifer**: permeable geologic material that holds and transmits water relatively easily - like sand, gravel, basalt flow tops & bottoms, other fractured bedrock, etc.

- **Aquitard or Confining Layer**: geologic material that transmits water very slowly - like clay or dense rock.

- **Groundwater Flow**: groundwater is always going somewhere.

- **Groundwater and Surface Water** are commonly interconnected aka hydraulic continuity.
Idealized Sediment Aquifer System

Timescales

USGS C1139
Idealized Basalt Flow

Figured borrowed from USGS, Burns 2012
Fractured Bedrock Aquifer

- Precipitation
- Evapotranspiration
- Regolith
- Shallow subsurface flow
- Spring
- Runoff
- High yield well
- Groundwater recharge
- Regolith
- Infiltration
- Fractured Bedrock
- Highly fractured fault zone
- Clay-rich fault zone
- Low yield well
- Table
- Water
Groundwater Movement

- Water passes through different types of geologic material at different rates or degrees of ease (or resistance). Hydrogeologists refer to this property as “Hydraulic Conductivity”.

- Groundwater is always going somewhere. Understanding how the aquifer is recharged and where it discharges are fundamental to making water resource decisions.

- Be aware of seasonal variability and long-term trends.
Hydraulic Conductivity Varies by Sediment/Rock Type

High Hydraulic Conductivity
(Low Resistance to Flow)

Gravel
Vesicular Basalt
(Primarily flow tops and bottoms)
Sand
Friable/Fractured Sandstone
Silt
Fine Grain Sedimentary Interbed

Low Hydraulic Conductivity
(High Resistance to Flow)

Shale, Mudstone
Basalt Dense Interior, Granite, etc
Ground Water and Surface Water Interaction / Relationship

Gaining Stream
- Baseflow - The component of streamflow derived from groundwater inflow or discharge

Loosing Stream
Pumping Scenarios to Consider

- Capture of Groundwater
- Capture of Surface Water
- Well to Well Interference
- Groundwater Mining Potential
Pumping a Well Forms a Capture Zone or "Cone of Depression"
How does the hydrogeology affect the decision process when reviewing an application to change an existing water right?
Types of Existing Rights Which may be Impacted

- Certificates
- Permits
- Claims
- Tribal and Federal Reserves
- Instream Flows
- Permit-Exempt Uses?
“Tests” to Consider When Reviewing an Application to Change a Water Right

- What is the valid extent of the right?
- Will the change enlarge or enhance the right?
- Will the change cause impairment to existing rights?
- For Groundwater to Groundwater changes, is the proposed source in the same body of public ground water?
- For Surface water to Groundwater changes, will the proposed groundwater withdrawals induce flow directly from the surface water source?
Aquifers have boundaries that divide it into separate regulated bodies of public ground water.

Boundaries can be created by:
- Thinning or Pinching of aquifer material
- Folds and Faults can obstruct groundwater flow
- Vertical Separation via confining horizons
- Other geologic phenomena
- Regulatory Considerations (Rules, Adjudication, etc.)

Ecology often requires specific well construction standards be met as a provision of use.
Impairment

- Can occur when changing an existing right in a highly regulated source. For example:

  - An existing adjudicated class 5 surface water right is to be changed to a groundwater withdrawal. The proposed well is constructed where it will not directly capture water from the regulated surface water body. Given that the well must be regulated as if it were the original surface water right…

Could this change impair existing rights?
Impairment

• Can occur with the “direction” of a change.

• For example: A right holder wishes to move a groundwater withdrawal up-stream to another field. There is an existing senior right in-between the authorized diversion and the proposed location. Given that the total creek flow is, at times, unable to satisfy the senior right…

Can this change request be authorized?
Geologic/Hydrologic Evaluation

- Conducted by Geologists and Hydrogeologists licensed to practice in the State of Washington (RCW 18.220; WAC 308-15), using various tools such as:
  - Office and Field Work
  - Geologic / Hydrogeologic Description
  - Aquifer Characterization
  - Conceptual Model
  - Impact Analysis (Evaluating Location, Timing, and Magnitude)
  - Analytical and Numerical Models

A Technical Report is not complete if calculations, locations, and work are not provided in full.
Geologist / Hydrogeologist Final Submittals (on Behalf of an Applicant)

• Should assist the Boards in addressing Geologic / Hydrogeologic issues specific to the proposed change.

• Will be reviewed by Ecology Hydrogeologists.

• Must bear the stamp of the Professional in Responsible Charge (RCW 18.220, WAC 308-15).
Decisions Can Be Complicated

- Work with the applicant to get qualified professional assistance for the given situation. Boards should feel empowered to demand a fact-based, objective, and complete technical analysis.

- Request technical assistance from Ecology early.

- Good luck with your efforts!
Questions?

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AN INTRODUCTION TO WATER RIGHTS IN WASHINGTON

February 24, 2020

John Rose L.G. – Water Resources Ecology
Water Rights 101

- Historical background and overview
- Definitions – Certificates, Permits, and Claims
- Permit Exempt wells
- Instream Flow Water Rights
- Criteria for assessing applications for new water rights, and changes to existing rights
- Relinquishment and Abandonment
- Existing and Future Challenges
Why do we need water rights?

- Water rights are required by law to ensure proper allocation and management of Washington’s water resources.
- Water rights establish priority dates which can be used to allocate water during times of drought.
Increasing competition for water

Human uses including irrigation
Increasing competition for water

Fisheries
Increasing competition for water

Sustainable Environment
Ecology’s Role

- Water Resources Manager of the State
- Administrator of water rights
- Regulator of water rights, well construction, dam safety & instream flows
- A water supply developer
Hydrologic Cycle

The Water Cycle

- Precipitation
- Snowmelt runoff
- Streamflow
- Infiltration
- Seepage
- Spring
- Freshwater
- Groundwater flow
- Groundwater storage
- Atmosphere
  - Sublimation
  - Desublimation
  - Evapotranspiration
  - Evaporation
  - Fog drip
  - Surface runoff
  - Dew
- Oceans
- Condensation
- Volcanic steam
- Ice and snow
- Water storage
The Evolution of Washington Water Use

- Allocation phase
- Transition to environmental sustainability
- Western Settlement
- 1917
- 1971
- Riparian use
- Prior Appropriation use
Historical Background

- Water owned in common since Roman times.
- Western Europe and Eastern U.S. adopts Riparian Doctrine
- Western U.S. adopts Prior Appropriation Doctrine in late 19th century.
In the west, whiskey is for drinking, and water is for fighting over – Mark Twain.
A Water Right Question

- I own a piece of land that I plan to build on when I retire and had a well drilled 5 years ago. I have a legal source of water, right?
- Not necessarily. WA’s first water code in 1917 for surface water established that a water right is only vested when water is put to beneficial use.
Surface Water Code - 1917
Ch. 90.03 RCW

Principles of Western water law adopted for Washington:

- “First in time, first in right”
- New uses of water need a permit
- Existing water rights protected
- Water right is appurtenant to the land
- A surface water right is Superior to a groundwater right

- **Note:** you cannot create a right through non-legal use
Ground Water Code - 1945
Ch. 90.44 RCW

- Supplemental to 1917 Surface Water Code
- New uses of ground water need a permit
- Small water uses exempted from permitting process (permit exempt wells). There are no exemptions for surface water.
Groundwater Permit Exemption

• Single or Group Domestic Use

• Cannot exceed 5,000 gallons/day
Groundwater Permit Exemption

- Irrigation of a non-commercial lawn or garden
- Not to exceed ½ acre
Groundwater Permit Exemption

LIVESTOCK
Groundwater Permit Exemption

- Industrial uses
- Not to exceed 5,000 gallons/day
What is a water right?

A water right is a legal authorization to the beneficial use of a reasonable quantity of public water during a certain period of time that occurs at a certain place.
Water Rights “P’s & Q’s”

**P’s ~**

- point of diversion or withdrawal
- purpose of use
- place of use
- priority date
- Period of use

**Q’s ~**

- “Qi” = instantaneous rate (gpm or cfs)
- “Qa” = annual quantity (afy)
Information on a water right

Designated Point of Diversion or Withdrawal

- **Point of Diversion** is for surface water

- **Point of Withdrawal** is for a groundwater well
Information on a water right

Purpose(s) of Use of the water right

- Irrigation
- Stockwatering
- Domestic (single or multiple)
- Power generation
- Commercial
- Fish propagation
- Fire suppression
- Etc.
Information on a water Right

Place of use

– Usually consists of a legal description from a land survey
Information on a Water Right

Priority Date

• Where are you in the hierarchy of water allocation

Period of use

• When can you turn on your water?
Information on a Water Right

**Water Quantities**
- Instantaneous Quantity (pumping rate)
- Annual Quantity (total volume)
Water Right Types

- **Water Right Certificates** issue to perfected rights under water code.
- **Water Right Permits** issue to allow development under water code.
- Water right claims were filed for rights established before the existing permit system.
- **Instream Flow Water Rights** issued to protect rivers and stream levels.
Obtaining a new Water Right:

The 4 Part Test

- use is beneficial
- water is available, legally and physically
- not detrimental to public interest
- The water right would not impair existing users

anyone can appeal Ecology’s decision for 30 days before permit issued.
What other things need to be considered?

- Existing Watershed Plans
- Stream Closures, instream flows
- SEPA
- Site-specific considerations
- Etc.
Instream Flow Water Right

- A water right for a river basin
- Meant to protect:
  - aquatic and wildlife habitat
  - water quality
  - recreational values and navigation
- Set by Ecology after scientific study and stakeholder agreement.
- Equal to all other water rights
- Any water right established after ISF rule is junior.
Ways that a Water Right can be Lost

- Statutory forfeiture due to nonuse (Chapter 90.14 RCW). Also known as Relinquishment or “Use it or lose it”.

- Abandonment of the right (Common Law).
Changing a water right

Elements of a water right that can be changed:

• **Source** - Groundwater or Surface
• **Purpose** - Irrigation, domestic, industrial etc.
• **Period of Use** – Seasonal or year round
• **Point of Diversion/Withdrawal** - location
• **Place of Use** – Where water is being used
• **Provisions** – To avoid failing the 4 part test.

**NOTE:** you cannot change the quantities or the priority date on a water right!
Changing a water right process

- Is there a water right to change?

- Is the proposed change allowable?
Is there a water right to change?

- Once a change application is received and investigation begins to approve or deny it.
  - Is there a certificate, permit or claim?
  - How big was it originally?
  - Has it been relinquished or abandoned?
Is the proposed change allowable?

- Public Interest
- Will there be impairment of existing water rights?
- Enlargement
- Season of Use Considerations
- Same Body of Groundwater
- Surface to Ground Transfers
- Consumptive Use Issues
Water law...

- 2/3 of the water law is not in statute -- it is common law (case law)
- A layer cake compiled over 120 years
- All uses are equal -- the only priority is “first in time is first in right”
- Limited/no recognition by GMA, ESA, other land use planning
Finis!

And now for the QUESTIONS!
Water Right Claims & Changes

PRESENTED BY
KURT WALKER, LHG
CENTRAL REGIONAL OFFICE, WASHINGTON STATE DEPARTMENT OF ECOLOGY
Training Objective

- Base Level Overview
- Describe the Claim System
- Review Key Challenges
- Opportunity for Q&A
What is a Claim?

It is a statement of claim to a water right that was established prior to creation of the Washington State Water Code permitting system (1917 for surface water & 1945 for groundwater)
What is a Claim?

It is a statement of claim to a water right that was established prior to creation of the Washington State Water Code permitting system (1917 for surface water & 1945 for groundwater)

aka – a registered assertion of a pre-code use of water
Water Right Claim Registration Act (1967)

- Established a water rights claim registry under RCW 90.14
Water Right Claim Registration Act (1967)

- Established a water rights claim registry under RCW 90.14
- Covered water use not previously required to be documented, primarily small domestic users.
Water Right Claim Registration Act (1967)

- Established a water rights claim registry under RCW 90.14
- Covered water use not previously required to be documented, primarily small small domestic users.
- Between 1969 and 1974, approximately 200,000 claims were filed.
Key Challenges & Limitations

- Claims are proven not assumed
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- Tentative determination typically requires extensive research to document the history of a pre-code water use
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- Validity and priority of a claim can only be confirmed through the adjudication process
Key Challenges & Limitations

- Claims are proven not assumed
- Tentative determination typically requires extensive research to document the history of a pre-code water use
- Validity and priority of a claim can only be confirmed through the adjudication process
- 1998 Claims are subordinate (junior) to all water rights established under RCW 90.03 and 90.44
Questions?

- More Information about claims
- Reach out to regional staff
- FAQ @
“Tentative determination,” means a determination of the extent and validity of an existing water right established pursuant to either chapter 90.03 RCW or 90.44 RCW, or claimed pursuant to chapter 90.14 RCW. Such determinations are tentative, as final determinations of the extent and validity of existing water rights can only be made by Superior Court through a general adjudication of water rights. (see POL-1120)
Recent court cases have concluded that the department’s authority on making tentative determinations is limited to establishing the degree to which water use complies with the attributes of the water right, rather than adjudicating between water users. See Rettkowski v. Department of Ecology, 219 122 Wn. 2d 219, 858 P. 2d 232; R.D. Merrill v. Pollution Control Hearings Board 137 Wn. 2d 118, 969 P.2d 459 (1999); Okanogan Wilderness League v. Town of Twisp 133 Wn. 2d 769, 947 P. 2d 732 (1997) and Public Utility District Number One of Pend Oreille County v. Department of Ecology 70372-8 (2002).
Who makes a tentative determination?

The department of Ecology or a water conservancy board may make a tentative determination.

A tentative determination is a finding that water has been:

- Beneficially used/perfected
- Not abandoned or relinquished
What Is a Tentative Determination?

Quiz

Which Water Resources policy describes Ecology’s use of tentative determinations?
A tentative determination is required when:

a) Changing a surface or groundwater right

b) Evaluating existing uses at proposed place of use for new water right

c) Evaluating potentially impaired rights

d) Evaluating rights subject to departmental orders, such as relinquishment
A tentative determination is NOT required when:

a) Administratively dividing a water right

b) Exempt well consolidation under existing rights (RCW 90.44.105)

c) Donating water into the Trust Program

d) Drilling a replacement well (RCW 90.44.100)
Simplified Tentative Determinations

A simplified tentative determination may be conducted when a tentative determination or other actions confirming beneficial use of the water right has recently occurred. Under these circumstances, an investigation of the complete history of the water right is not required.
Instances where simplified tentative determinations can be conducted include:

a. The existing water right has had recent departmental action, such as the issuance of a change approval within the last 5 years;

b. The existing water right was confirmed as part of an adjudication or other court action that determined the extent and validity of the right within the last 5 years;

c. The existing water right is for a municipal water supply in accordance with RCW 90.03.330(3).
Simplified Tentative Determinations

**QUIZ** – Why can a simplified tentative determination be used within 5 years of a previous determination?
How are tentative determinations conducted?

a) Determine period of evaluation

b) Determine what materials are available to review

Direct water measurement and observation by the investigator, declarations and affidavits of parties with personal knowledge of historic water use on the subject property, water meter records, power records, crop or product sales records, water billing records, population estimates, county assessor records, aerial or other historic photographs, remote sensing imagery, crop irrigation guides, water duty publications, land use or tax records, field surveys and other data.
Typical steps for conducting a tentative determination

a) Evaluate instantaneous and annual quantities
b) Verify the source of water
c) Determine location of diversion/withdrawal
d) Determine place of use and extent of beneficial use
e) Determine the purpose of use
f) Determine period of use for each purpose
g) Determine priority date
Unauthorized or “de facto” changes to a water right

Some changes are made to historic uses of water without approval

Beneficial use considered to be the measure of the right

Ecology encourages voluntary compliance and remedies
Questions?
Understanding Loss of Water Rights: Common Law Abandonment and Statutory Relinquishment
No more “Wookie” mistakes
Why does this stuff matter?

• First things first—If someone wants to transfer a water right, they have to have a valid water right to transfer

• Loss of Water Rights is a BIG DEAL because water rights are PROPERTY RIGHTS
Why have “Use It Or Lose It”?

ONE OF THE GREATEST FUNDAMENTALS OF WESTERN/WASHINGTON WATER LAW

• Water was scarce when people settled the western United States
• People needed to move water away from streams and lakes to make the land usable
• If you didn’t need water, someone else probably did
The Chicken Before the Egg?

• We haven’t always had “statutory relinquishment”

• If the “egg” is statutory relinquishment, then the “chicken” that had to come before it is “common law abandonment”
WHAT IS COMMON LAW ABANDONMENT?

- First, what the heck is common law?
- Common Law Abandonment of water rights is the intentional surrender of the water right.
- Law dictionary defines “abandonment” as “the surrender, relinquishment, disclaimer, or cession of property or of rights. Voluntary relinquishment of all right, title, claim and possession, with the intention of not reclaiming it.”
- Under CASE LAW, our courts have established a rebuttable presumption of abandonment of water rights after a lengthy period of nonuse (Twisp/Sullivan Creek).
- Even though we now have STATUTORY relinquishment, we also still have common law abandonment, and so this is something that water conservancy boards MUST consider.
- Abandonment may have occurred at any time during the history of the water right.
THE ACT: CHAPTER 90.14 RCW
WATER RIGHTS—REGISTRATION, WAIVER AND RELINQUISHMENT
The future growth and development of the state is dependent upon effective management and efficient use of the state's water resources. The purpose of this chapter is to provide adequate records for efficient administration of the state's waters, and to cause a return to the state of any water rights which are no longer exercised by putting said waters to beneficial use.
The Basics

RCW 90.14.130—”Reversion” Due to Nonuse—Notice By Order, Determinations and Appeal

• Essentially, Ecology must notify a water user by order if it appears that the water user has failed to use all or a portion of a water right
Rights Subject to Relinquishment

- *Prior* Rights Acquired Through Prior Appropriation, Custom or Adjudication—RCW 90.14.160 (claims)
- Riparian Rights—RCW 90.14.170
- *Future* Rights acquired through appropriation—RCW 90.14.180 (Certificated Water Rights)
Relinquishment is a voluntary failure to use all or a portion of a right for five successive years.

Rights can only be relinquished for nonuse after 1967 (the date of the Act).

There may be sufficient cause for nonuse (exceptions to statutory relinquishment).

Once it’s gone, it’s gone (Lost rights cannot be revived by using them again).
- Water conservancy boards do NOT have the authority to issue relinquishment orders.

- Water conservancy boards DO have the authority to tentatively determine the extent and validity of water rights proposed for transfer.

- This can be important in court cases if you are a water right holder and want to challenge whether some or all of your right may be subject to relinquishment.
If someone comes to a conservancy board to amend change the place of use of a groundwater permit, can a conservancy board conduct a tentative determination regarding the extent and validity of that permit?
NO—permits are not subject to statutory relinquishment. When a party is seeking to change or amend a permit, e.g. under RCW 90.44.100, the proper inquiry is into whether the permit has been developed with diligence. If not, it is subject to full or partial cancellation.
Relinquishment ORDERS

- State bears burden of proving non-use in whole or in part for five or more successive years
- If non-use proven by State, water right holder bears burden of proving any applicable exceptions/exemptions
• RCW 90.14.140—Defining “Sufficient Cause” For Nonuse
• Water Conservancy Boards should look here if it appears a water right may have relinquished in whole or part
• “As a Result of” exceptions and “Automatic Exemptions”
• Common exceptions/exemptions include:
  – Drought/Unavailability of Water; RCW 90.14.140(1)(a)
  – Operation of Legal Proceedings; RCW 90.14.140(1)(d)
  – Determined Future Development; RCW 90.14.140(2)(c)
  – Municipal Water Right; RCW 90.14.140(2)(d)
• Exceptions are narrowly construed
• Exceptions do not apply to rights that may have been abandoned
The Relinquishment Parking Lot

- State may acquire all or a portion of an existing water right by purchase, lease, gift, etc. as a trust water right
- Trust water rights acquired by the state are held by the state and can be used for instream flows, irrigation, municipal and other beneficial uses
- Trust water rights cannot be relinquished
- What goes in must come out
**R.D. Merrill v. Pollution Control Hearings Board (1999)** - Seminal relinquishment case discussing determined future development, operation of legal proceedings

- **Determined Future Development (“DFD”)**—Have to have a *fixed and definitive plan* within five years of the last beneficial use of the right. “Some steps” required within 15 years

- Legal Proceedings themselves must prevent the use of the water
Relinquishment Case Law

Pacific Land Partners v. Dep’t of Ecology (2009)—Court of Appeals affirms Ecology relinquishment order of an irrigation water right. Issues include operation of legal proceedings (bankruptcy), determined future development (new irrigation project), and unavailability of water (silted in pipes) relinquishment exceptions.

City of Union Gap and Ahtanum Ridge Business Park v. Dep’t of Ecology (2008)—Court of Appeals affirms Ecology decision denying transfer of former industrial water right from ARBP to Union Gap for municipal supply based on Ecology’s determination that the water rights had relinquished due to nonuse. Issues include the determined future development exception to relinquishment and the municipal water supply purposes exception to relinquishment.

Acquavella 5—Supreme Court—One cannot simply resume the same use after many years and have the nonuse excused as a determined future development
Irrigator who has the *best records ever* comes to your conservancy board for a change and transfer of a 100 acre-foot water right. Those records show the following:

1964 and prior—right is fully exercised
1965—no beneficial use—irrigator battling illness
1966—no beneficial use—irrigator’s pump broke and he didn’t have the money to fix it
1967—no beneficial use—irrigator subleased to farmer who didn’t irrigate because prices were bad for crop
1968—no beneficial use—irrigator went to San Francisco to explore playing in a band
1969—no beneficial use—irrigator came back home, married, and decided to start farming again for family
1970—use of 50 acre-feet—irrigator decided to just start small, ease back into farming
1971—use of 75 acre-feet of water
1972—present—use of 100 acre feet of water—irrigator fully operational again
A municipality acquires by purchase a fully valid irrigation water right and they intend to add it to the city’s portfolio of water rights for municipal use and future growth. Larry, the City Procurement Officer puts it in a drawer with plans to file the change application with the WCB as soon as possible. He then dies of a heart attack, the right is forgotten about, and sits unused for ten years. The city then finds it is running out of water rights when someone finds the old right buried deep in Larry’s desk. City files an application to change the right with WCB more than ten years after the right was last used

Relinquished????????
An irrigator has a surface water diversion in the main channel of a creek. After a storm, the main channel moves 150 onto someone else’s property. All that remains at the original point of diversion is a dry creek bed. Irrigator offers to pay neighbor for access. Neighbor refuses. Irrigator sues neighbor and the case winds up in court. It takes seven years for the case to resolve, with the court ordering the neighbor to allow the irrigator access to the new creek bed. No use has occurred during all of this litigation. Year seven, irrigator comes to WCB to change POD to new POD in rechanneled creek.

Relinquished????????
End

Questions?
“What is a Beneficial Use?

Alan Reichman,
Senior Counsel
Washington Attorney General’s Office
“’Beneficial use’ is a term of art in water law, and encompasses two principal elements of a water right. First, it refers to the purposes, or type of activities, for which water may be used. . . . Second, beneficial use determines the measure of a water right. The owner of a water right is entitled to the amount of water necessary for [its] purpose. . . . .”
The term “beneficial use” has 2 meanings.

The first relates to the types of water use that are deemed to be beneficial, such that one can establish water rights to be able to accomplish them.
The second relates to the measure of a water right. To perfect a right, one has to put it to beneficial use. Also, to maintain a right, one generally has to continue to put water to beneficial use. And, one only has the right to use a quantity of water that is deemed to be beneficial, i.e. not in excess of the amount of water that is reasonably needed to carry out the allowed use.
Background on Washington Water Law


- At first, both the riparian and prior appropriation doctrines were recognized.
As soon as Washington obtained statehood it began moving away from riparian rights and towards the prior appropriation doctrine.

Through enactment of the Water Code (RCW 90.03) in 1917, Legislature established prior appropriation doctrine as the sole means of establishing water rights.
RCW 90.03.010

The power of the state to regulate and control the waters within the state shall be exercised as hereinafter in this chapter provided. . . [A]ll waters within the state belong to the public, and any right thereto, or to the use thereof, shall be hereafter acquired only by appropriation for a beneficial use and . . . as between appropriations, the first in time shall be the first in right. . . .
The department shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, it shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied.
"Beneficial use" shall include, but not be limited to, use for domestic water, irrigation, fish, shellfish, game and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation.
Uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state, are declared to be beneficial.
"Municipal water supply purposes" means a beneficial use of water: (a) For residential purposes through fifteen or more residential service connections . . . ; (b) for governmental or governmental proprietary purposes by a city, town, public utility district, county, sewer district, or water district; or . . .
If water is beneficially used under a water right for the purposes listed in (a), (b), or (c) of this subsection, any other beneficial use of water under the right generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes.
Beneficial uses of water under a municipal water supply purposes water right may include water withdrawn or diverted under such a right and used for:

1. Uses that benefit fish and wildlife, water quality, or other instream resources or related habitat values; or
2. Uses that are needed to implement environmental obligations called for by a watershed plan . . . or a comprehensive watershed plan adopted under RCW 90.54.040(1). . . .
Quantification of a water right must be determined based on actual beneficial use – and not on the capacity of the irrigation district’s delivery system.

A water right must be perfected through actual beneficial use, and not system capacity.
Until 1990s, Ecology had issued certificates to municipal suppliers with quantities based on “pumps and pipes.”

Mr. T appealed permit extension with condition stating that certificate would be issued based on actual use.

- Supreme Court ruled in favor of Ecology and held that that certificates must only be issued based on actual use, because that is the only measure of beneficial use for perfection and quantification of a water right.
The future growth and development of the state is dependent upon effective management and efficient use of the state's water resources. The purpose of this chapter is to provide adequate records for efficient administration of the state's waters, and to cause a return to the state of any water rights which are no longer exercised by putting said waters to beneficial use.
The legislature finds that:

(3) A strong beneficial use requirement as a condition precedent to the continued ownership of a right to withdraw or divert water is essential to the orderly development of the state;

(4) Enforcement of the state's beneficial use policy is required by the state's rapid growth;

(5) All rights to divert or withdraw water, except riparian rights which do not diminish the quantity of water remaining in the source such as boating, swimming, and other recreational and aesthetic uses must be subjected to the beneficial use requirement. . . .
Any person hereafter entitled to divert or withdraw waters of the state through an appropriation authorized under RCW 90.03.330, 90.44.080, or 90.44.090 who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw for any period of five successive years shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state.
The validity and extent of a water right is determined based on (a) ascertaining maximum historical beneficial use; and (b) ascertaining whether any of the perfected quantity was extinguished due to nonuse under the statutory relinquishment or common law abandonment.
“Reasonable use of water is determined by analysis of the factors of water duty and waste.”

Water use must be “reasonably efficient,” and “[l]ocal custom and the relative efficiency of irrigation systems in common use are important elements, but must be considered in connection with other statutorily mandated factors. . . .”
Methow Valley Irrig. Dist v. Ecology, PCHB No. 02-074

- PCHB upheld Ecology enforcement order limiting MVID’s water use because of waste.
- Water right holder can be required to use less water than specified under their water right.
Based on the tenet of water law which precludes wasteful practices in the exercise of rights to the use of waters, Ecology shall reduce these practices to the maximum extent practicable, taking into account sound principles of water management, the benefits and costs of improved water use efficiency, and the most effective use of public and private funds.
No public groundwaters that have been withdrawn shall be wasted without economical beneficial use. . . In the issuance of an original permit, or of an amendment to an original permit or certificate of vested right to withdraw and appropriate public groundwaters under the provisions of this chapter, [Ecology] may . . . specify for the proposed well or wells or other works a manner of construction adequate to accomplish the provisions of this section.
The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use . . . if such change can be made without detriment or injury to existing rights.
[U]pon the issuance by the department of an amendment to the appropriate permit or certificate of groundwater right, the holder of a valid right to withdraw public groundwaters may . . . construct wells or other means of withdrawal at a new location in substitution for or in addition to those at the original location, or the holder may change the manner or the place of use of the water.
Legislative Process

- Introduced
  - Referred to policy committee
- Policy Committee
  - Public hearing
  - Executive session (w/ vote)
- Fiscal Committee
  - Public hearing
  - Executive session (w/ vote)
- Rules Committee
  - Pulled to floor by a member
- Floor Action
  - 2nd reading
  - 3rd reading and final passage

House of Origin
Opposite House
<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 11, 2021</td>
<td>First Day of Session</td>
</tr>
<tr>
<td>February 15, 2021</td>
<td>Last day to read in committee reports (pass bills out of committee and read them into the record on the floor) in house of origin, except House fiscal committees and Senate Ways &amp; Means and Transportation committees.</td>
</tr>
<tr>
<td>February 22, 2021</td>
<td>Last day to read in committee reports (pass bills out of committee and read them into the record on the floor) from House fiscal committees and Senate Ways &amp; Means and Transportation committees in house of origin.</td>
</tr>
<tr>
<td>March 9, 2021</td>
<td>Last day to consider (pass) bills in house of origin (5 p.m.).</td>
</tr>
<tr>
<td>March 26, 2021</td>
<td>Last day to read in committee reports (pass bills out of committee and read them into the record on the floor) from opposite house, except House fiscal committees and Senate Ways &amp; Means and Transportation committees.</td>
</tr>
<tr>
<td>April 2, 2021</td>
<td>Last day to read in opposite house committee reports (pass bills out of committee and read them into the record on the floor) from House fiscal committees and Senate Ways &amp; Means and Transportation committees.</td>
</tr>
<tr>
<td>April 11, 2021*</td>
<td>Last day to consider (pass) opposite house bills (5 p.m.) (except initiatives and alternatives to initiatives, budgets and matters necessary to implement budgets, differences between the houses, and matters incident to the interim and closing of the session).</td>
</tr>
<tr>
<td>April 25, 2021</td>
<td>Last day allowed for regular session under state constitution.</td>
</tr>
</tbody>
</table>

* After 5:00pm on the 91st day, only initiatives, alternatives to initiatives, budgets and matters necessary to implement budgets, matters that affect state revenue, messages pertaining to amendments, differences between the houses, and matters incident to the interim and closing of the session may be considered.

2021 Regular Session cutoff dates were established in SB 2401, and adopted by the House & Senate.
## Legislature’s Website

[www.leg.wa.gov](http://www.leg.wa.gov)

### What’s happening on the floor?

Today is Day 71 of the 2019 Regular Session

- [House Floor Activity](#) | [Senate Floor Activity](#)

Scheduled hearings and floor sessions: [Today](#)

<table>
<thead>
<tr>
<th>Committee</th>
<th>Agenda</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law &amp; Justice (S)</td>
<td></td>
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<tr>
<td>Labor &amp; Commerce (S)</td>
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<tr>
<td>HOUSE SESSION/CAUCUS</td>
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<tr>
<td>PRO FORMA SENATE SESSION</td>
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<tr>
<td>Labor &amp; Workplace Standards (H)</td>
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<tr>
<td>Environment &amp; Energy (H)</td>
<td></td>
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<tr>
<td>Housing Stability &amp; Affordability (S)</td>
<td></td>
</tr>
</tbody>
</table>

**Highlights**

**Legislative Hotline: 1.800.562.6000**

- Bills Passed Cutoff
- Bill Signing Photos

**Public Records Requests**

For information about submitting a public records request to either the House or the Senate, visit:

- [House Public Records Request](#) | [Senate Public Records Request](#)
HB 1622 - 2019-20
Concerning drought preparedness and response.
Sponsors: Blake, Kretz, Springer, Chandler, Chapman, Dent, Shewmake

By Request: Department of Ecology

Companion Bill: SB 5675

Bill Status-at-a-Glance
See Bill History for complete details on the bill

As of Monday, March 25, 2019 03:31 PM

Current Version:
Engrossed Substitute - ESHB 1622

Current Status:
SAg/Water/Natur

Where is it in the process?

Introduced | In Committee | On Floor Calendar | Passed Chamber
---|---|---|---
In the House: | | | |
In the Senate: | | | |
After Passage: | | | |

Passed Legislature | On Governor's Desk | Governor Acted | Session Law
# Bill History

## 2019 REGULAR SESSION

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan 25</td>
<td>First reading, referred to Rural Development, Agriculture, &amp; Natural Resources.</td>
</tr>
<tr>
<td>Feb 8</td>
<td>Public hearing in the House Committee on Rural Development, Agriculture, &amp; Natural Resources.</td>
</tr>
<tr>
<td>Feb 15</td>
<td>Executive session scheduled, but no action was taken in the House Committee on Rural Development, Agriculture, &amp; Natural Resources.</td>
</tr>
<tr>
<td>Feb 20</td>
<td>Executive action taken in the House Committee on Rural Development, Agriculture, &amp; Natural Resources.</td>
</tr>
<tr>
<td>Feb 22</td>
<td>Referred to Capital Budget.</td>
</tr>
<tr>
<td>Feb 25</td>
<td>Public hearing in the House Committee on Capital Budget at 9:00 AM.</td>
</tr>
<tr>
<td>Feb 26</td>
<td>Executive action taken in the House Committee on Capital Budget at 9:00 AM.</td>
</tr>
<tr>
<td>Mar 6</td>
<td>Rules Committee relieved of further consideration. Placed on second reading.</td>
</tr>
<tr>
<td>Mar 12</td>
<td><strong>1st substitute bill substituted (RDAN 19).</strong> (View 1st Substitute)</td>
</tr>
<tr>
<td></td>
<td>Floor amendment(s) adopted.</td>
</tr>
<tr>
<td></td>
<td>Rules suspended. Placed on Third Reading.</td>
</tr>
<tr>
<td></td>
<td>Third reading, passed; yea, 80; nays, 16; absent, 0; excused, 2. (View 1st Engrossed)</td>
</tr>
</tbody>
</table>

## IN THE SENATE

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mar 14</td>
<td>First reading, referred to Agriculture, Water, Natural Resources &amp; Parks.</td>
</tr>
<tr>
<td>Mar 26</td>
<td>Scheduled for public hearing in the Senate Committee on Agriculture, Water, Natural Resources &amp; Parks. (Committee Materials)</td>
</tr>
</tbody>
</table>
Available Documents

For a complete list of documents, go to Online Reports Text of a Legislative Document.

Bill Documents
- Original Bill
- Substitute Bill
- Engrossed Substitute

Bill Digests
- Bill Digest

Bill Reports
- House Bill Analysis 2019
- House Bill Report
- Engrossed Substitute House Bill Report
- Engrossed Substitute Senate Bill Report (Orig.)

Fiscal Note

Get Fiscal Note

Amendments

<table>
<thead>
<tr>
<th>Amendment Name</th>
<th>Num</th>
<th>Sponsor</th>
<th>Type</th>
<th>Description</th>
<th>Action</th>
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<tr>
<td>1622-S AMH DENT HATF 095</td>
<td>265</td>
<td>Dent</td>
<td>Floor</td>
<td>Pg 4 Ln 4</td>
<td>WITHDRAWN</td>
</tr>
<tr>
<td>1622-S AMH DENT HATF 116</td>
<td>360</td>
<td>Dent</td>
<td>Floor</td>
<td>Pg 4 Ln 4</td>
<td>ADOPTED 03</td>
</tr>
<tr>
<td>1622-S AMH DYEM HATF 089</td>
<td>190</td>
<td>Dye</td>
<td>Floor</td>
<td>Pg 2 Ln 29</td>
<td>ADOPTED 03</td>
</tr>
</tbody>
</table>

Available Videos

(video links take you to the TVW website)

Live video is available at the stated time. Archived video becomes available approximately two hours after the close of the hearing.

Feb 8, 2019 House Rural Development, Agriculture, & Natural Resources at 10:00 AM
Feb 20, 2019 House Rural Development, Agriculture, & Natural Resources at 8:00 AM
ENGROSSED SUBSTITUTE HOUSE BILL 1622

State of Washington     66th Legislature     2019 Regular Session

By House Rural Development, Agriculture, & Natural Resources
(originally sponsored by Representatives Blake, Kretz, Springer,
Chandler, Chapman, Dent, and Shewmake; by request of Department of
Ecology)

READ FIRST TIME 02/22/19.

1   AN ACT Relating to drought preparedness and response; amending
2   RCW 43.83B.400, 43.83B.405, 43.83B.410, 43.83B.415, and 43.83B.430;
3   adding new sections to chapter 43.83B RCW; decodifying RCW
4   43.83B.005, 43.83B.200, 43.83B.210, 43.83B.300, 43.83B.345,
5   43.83B.360, 43.83B.380, and 43.83B.385; repealing RCW 43.83B.220 and
6   43.83B.336; and providing an expiration date.

7   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8   NEW SECTION.  Sec. 1. A new section is added to chapter 43.83B
Sec. 2. RCW 43.83B.400 and 1989 c 171 s 1 are each amended to read as follows:

((It is the intent of)) The legislature ((to provide emergency powers to the department of ecology to enable it to take action, in a timely and expeditious manner, that are designed to alleviate hardships and reduce burdens on various water users and users arising from drought conditions. As used in this chapter, "drought condition" means that the water supply for a geographical area or for a significant portion of a geographical area is below seventy-five percent of normal and the water shortage is likely to create undue hardships for various water users and users.)) recognizes that drought and water shortages can place a significant hardship on Washington communities, farms, and the natural environment. Rising temperatures due to climate change may cause water supply shortages to be more frequent and severe in the future. Therefore, the ability to respond to drought and water shortage emergencies is critical to the long-term prosperity of our state. It is the intent of the legislature to provide the department with the authority to effectively and efficiently take actions when a drought emergency occurs to alleviate hardship on water users and our natural environment.

The legislature also recognizes that effective emergency drought response is predicated on building resiliency and preparedness before water shortages occur. Therefore, it is also the intent of the legislature that the department assist water users by supporting measures to strengthen the resiliency and preparedness of water users to drought conditions in the long term.
**Bodies of Law**

- **Statute:** Revised Code of Washington  
  - RCW 90.03 and 90.44

- **Administrative Rule:** Washington Administrative Code  
  - WAC 173-XXX, WR program: 56 chapters

- **Case Law:**  
  - Rettkowski v. Dept. of Ecology, Okanogan Wilderness v Town of Twisp, Sullivan Creek

- **Agency Policy:**  
  - POL 1000: Water Rights Administration Policy
All virtual, little in-person activity.

Monday was the deadline to pass out of fiscal committees.

The numbers, as of 2/18/21:
- **1,099** bills introduced
- **463** bills still active
- **178** bills tracked by Ecology
- **9** bills tracked by the Water Resources Program

Sine Die is **April 25**.
HB 1143
Walla Walla
Trust Water Rights

• **Prime Sponsor:** Rep. Rude
• **Description:**
  • Water right holders who have rights banked in the Walla Walla pilot water bank (RCW 90.92.070) can temporary donate their rights to the Trust Water Rights Program.
  • Donated rights retain the same quantity that they were while banked under the pilot project for a period of 2 years.
• **Status:** On the House floor ready for a vote.
SSB 5230
Groundwater Agreements

- **Prime Sponsor:** Sen. Dozier
- **Description:**
  - Clarifies that Ecology and USBR can enter into agreements to co-manage and allocate groundwater that exists as a result of the Columbia Basin Project operations without complying with procedures in RCW 90.44.130 on determinations of groundwater availability.
- **Status:** On the Senate floor ready for a vote.
HB 1132
Relinquishment

• **Prime Sponsor:** Rep. Kretz

• **Description:**
  • Establishes that a water right is subject to relinquishment only within the 15 years prior to the time of evaluation.
  • Adds an exception to relinquishment to provide protection to "good faith purchasers" of water rights (the exception only applies in selected counties).

• **Status:** “Zombie.” Received a public hearing but did advance beyond policy committee.
HB 1385
Out-of-Basin Transfers

- **Prime Sponsor:** Rep. Goehner
- **Description:**
  - Bans out-of-basin transfers from specified WRIAs through Aug 2022.
  - Creates a pathway to establish local agricultural water banks in specified WRIAs.
  - After Aug 2022, provides local water banks *right of first refusal* on all such transfers afterward.
- **Status:** “Zombie.” Did not receive a public hearing.
Thank You

Carrie Sessions
carrie.sessions@ecy.wa.gov
CONSERVANCY
BOARDS
Received Application for
Change/Transfer
2021
When Application for Change is received

- Does the Board have Jurisdiction? (RCW 90.80.055)
- Water is currently or would be diverted, withdrawn or used within the Board's geographic area (RCW 90.80.070(2))
- If the proposed diversion or withdrawal is from another county (Public Notice of hearing required) (RCW 90.80.070(2))
- If both counties have conservancy board authority, applicant may apply to either board (WAC 173-153-060(10))
- No jurisdiction within the boundaries of a Federal Indian Reservation (either from or to) (RCW 90.80.055(2))
- Is proposed change/transfer moving out of WRIA? Family Farm permits/certificates only in certain circumstances (RCW 90.66.065(4))
Complete Application for Change/Transfer

- Is the application changing the purpose of use? Family Farm permits/certificates only under certain circumstances.
- Is the application complete and legible?
- Did applicant provide maps, parcel #'s, deeds, contracts, water usage records, CRP records and well logs?
- Maps should show (POU, POW) From and To OR Existing/Proposed
- Is the applicant the authorized water right holder?
- Is the applicant the legal landowner?
- If not, does applicant have authorized signatures?
- Signatures are required for the existing and proposed place of use on the application for change/transfer
Complete Application for Change/Transfer

- Does the Board understand the change/transfer being proposed?
- Is the applicant changing/adding Point of Diversion or withdrawal, changing POU, changing/adding purpose of use, adding irrigated acres?
- The board may request supporting information/documents that the board needs to help determine if the board wants to accept application for processing. ie: Same body groundwater
- Separate applications are required for each water right
- For projects with multiple applications, how are the water rights related to each other. Are they additive, non-additive or supplemental or alternate source? Does the board understand the relationship of the water rights. ASK questions........
Board votes to accept App. For Change

- Board is not required to accept all Applications for Change/Transfer
- If majority of Board determines a filed application for change/transfer is complete and the board can act on the application, a quorum of the Board votes to accept for processing.
- Application is now in-line with priority date for processing w/Board
- The Board must forward the complete original application for change/transfer to Ecology with the Boards assigned number within 5 business days of when the Board formally accepts the application
- Boards numbering system is the first 4 letters of the name of the county, second set of numbers is the year the application is accepted and third set is the two digit sequential number of applications received (WALL-18-01)
- Board should request copy of entire water right file from Ecology (No charge)
Board votes to accept App. For Change
(WAC 173-153-070)

- Ecology sends acknowledgement letter with Ecology number back to Board (within 30 days)
- Ecology opens and maintains a file for permanent record keeping and the application is considered dual-filed but not in Ecology’s active processing
- Ecology will not act on the change application unless the Board declines to process or discontinues processing the application
- If the Board declines or discontinues processing, the board must return the application to the applicant and inform them the application may be filed with Ecology (A majority vote of a quorum required to decline or discontinue)

- By written request, the applicant may request Ecology process the application for change/transfer.
- Applicant required to pay Ecology fees if Ecology is requested to process the application for change/transfer
Questions, Answers, Comments
After Application for Change is Accepted

• Next steps in processing an Accepted Application for Change/Transfer
• Prepare Public Notice consistent with RCW 90.03.280
• Public Notice is published once a week for two consecutive weeks

**What’s in a Public Notice? WAC 173-153-080**
• The applicants name and city and county of residence (FROM)
• The board’s assigned water right application change number (WALL-18-01)
Public Notice continued...

- The water right priority date
- A description of the existing water right proposed to be changed: Surface, Ground, Permit, Certificate, or Claim along with the water right number
- Location of the Existing Point of Diversion or Withdrawal (at a minimum the legal should be the ¼ ¼ section (example SW1/4 of NE 1/4)
- Existing Place of Use (Can use general legal if authorized POU is a metes & bounds)
- Purpose of Use and Period of Use (EXAMPLE: If water right identifies March 1 to Nov. 1, Notice can state Seasonal use)
Public Notice Continued....

- If for Irrigation purposes state the total number of acres irrigated
- The amounts authorized in Instantaneous Rate (gpm or cfs) as stated on the Water Right Document
- The total annual quantity (acre-feet) as stated on the Water Right Document

**Description of the Proposed Change/Transfer (TO)**
- Change/Add point(s) of diversion or withdrawal
- Change/Transfer place of use
- Change Purpose of use (if Applicable)
• Add purpose of use/or add irrigated acres (if Applicable)
• Total number of irrigated acres to be irrigated
• Instantaneous Rate and Annual Quantity
• Instantaneous Rate and Annual Quantity if only a portion of the water right is proposed to be Changed/Transferred
• No need to state “No increase in GPM or Acre-Feet (WHY)
• Within the public notice, a section stating the manner and time limit for filing protest with Ecology under RCW 90.03.470 and WAC 508-12-170
AND identify manner for providing written and oral comments or other information to the Board including; Board’s mailing address and Place, Date, and Time of any public meetings or hearing scheduled to consider, discuss or decide on the Application for Change/Transfer

After confirming the Public Notice is correct, the Board must send a copy to Ecology at the same time the notice is submitted for publication to the proper newspaper

Who else is sent a copy of the Public Notice?
Public Notice Continued...

- Washington State Dept. Fish and Wildlife (WDFW)
- Any Indian Tribe with reservation lands within the jurisdiction of the Board
- Eastern Washington Council of Governments (EWCOG)
- Dept. of Archeology and Historic Preservation
- Watershed Planning Unit
- Other Interested Parties??
After Publication

• Before issuing decision the Board must receive a notarized affidavit of publication
• Board needs to verify the publication is correct
• If publication is incorrect, the notice must be republished. (Amended)
• Remember to send republications to all parties that were sent original public notice
• Allow 30 days for any protests or objections to the change/transfer
• Ecology receives the protest with fee, Ecology has shall provide a copy of protest within 5 days of receipt
After Publication

- Any protest letters or letters of support received after the 30 day protest period must be considered in Report of Examination
- Differences in protest, letters of concern/support, oral comment at Board meetings/hearings?
- QUESTIONS???
Investigation of proposed change/transfer

- After receiving the Water Right file copy from Ecology, review water right records
- What is the current authorization? GPM or CFS, total annual water in acre-feet, purpose of use, place of use, point of withdrawal, seasonal use, other parameters?
- Are there any special provisions? ie. Family Farm, Lowflow restrictions, cut off date, supplemental
- Are maps that have been supplied by Applicant consistent with existing water right
- Understand the current existing authorization
Investigation continued...

- Set up a Field Examination with Applicant or Applicants representative
- During field exam the Board may clarify any discrepancies in the proposed change/transfer. Ask questions...
- Does the existing parameters of the water right accurately depict what is viewed on the ground during site visit?
- If for irrigation purposes, can the Board determine the total number of acres irrigated and/or the place of use is accurate
- FSA records along with aerial photos can help support findings
Investigation continued...

- Any evidence that water right is subject to abandonment or relinquishment for non-use? Multiple years of aerial photos may show non-use. Why?
- For Ground Water Rights, has the Applicant provided any Hydrological reports as to somebody of Groundwater if changing/adding a well?
- Other technical reports?
- For Surface Water Rights, have they been perfected? Only beneficially used water may be transferred. (POD exceptions)
- Any flowmeter records or crop records available to determine or support the total amount of water requested for transfer?
Investigation continued...

- Identify type of irrigation system that is currently on site? Handlines, wheel lines, center pivot(s), drip system?
- Type of system will be used to reference system efficiency with Washington State Irrigation Guide (WIG)
- **Proposed Change/Transfer location investigation**
- Does application and publication have correct legal descriptions based on site visit?
- Does applicant have an existing point of withdrawal or diversion which is being proposed for use? Is it the same body of public ground water, technically or by rule?
Investigation continued...

- For irrigation purposes, does applicant have adequate irrigable lands to accommodate the change/transfer?
- Are there other water right within the same proposed place of use? How will proposed water right be exercised in conjunction with the other water rights at the place of use?
- Are there neighboring water rights that may be impaired? Are sources the same? Any protest received? Any history of impairment in the area?
Investigation continued...

• Are there neighboring water rights that may be impaired? Are sources the same? Any protest received? Any history of impairment in the area?

• Did Applicant supply a geologic, hydrogeologic or other scientific investigations to support a conclusion of non-impairment?

• Does the Board agree with the conclusion?

• How long of a development schedule is needed? Scope of project?

• Does the Change/Transfer comply with RCW 90.03.380, RCW 90.44.100?
Investigation continued...

• Any special circumstances that require additional steps to be taken to comply with RCW’s and WAC’s?
• Does the Board need to do SEPA? Request assistance from County.
• Does the Board need to perform a annual consumptive quantity calculation for added purpose(s) of use or added irrigated acres?
• Are there special provisions that are required to be carried forward? Family Farm, Low flow restrictions, cut off date, supplemental, casing and sealing of a well?
• Any other questions the Board’s might want to ask applicant at this point?
Investigation continued...

- Is the proposed change/transfer is a Beneficial Use?
- The Board has made a tentative determination of the extent and validity of the water right?
- The change/transfer would not be a enlargement of the right.
- There will be no impairment of both senior and junior rights.

Questions, Answers, Comments
Board’s Recommendation to Ecology...

• If a majority of the Board determines the change/transfer is in accordance with RCW 90.03.380, 90.03.390, or 90.44.100 the Board must issue a Record of Decision approving the change, subject to review by the director

• The Board must issue a Report of Examination fully documenting and summarizing the basic facts of their investigation of the Application for Change/Transfer

• The content of the Report of Examination is outlined in WAC 173-153-130.
After the Board’s decision they have 15 days to send the decision to Ecology.

Also receiving the decision is the Applicant, any protestant, anybody that requested the decision, any tribe within the Board’s jurisdiction and any commenting agency or tribe.

The Board’s decision must clearly state that the Applicant may not proceed to act on the recommendation of the Board until Ecology makes a final decision to Affirm, Reverse or Modify.

Ecology has 45 days make a decision. May extend additional 30 days.
Conservancy Board Training
Special circumstances & other random things to know!

Buck Smith
Senior Hydrogeologist
Northwest Regional Office
A field examination is needed:

- To have the opportunity to speak directly with the applicant

- To gain on-the-ground knowledge of the project. The on-the-ground situation is almost always different than the documents on file!

- And, to meet with protestors in order to understand their concerns
Field Exam

Things to be aware of:

• No trespassing signs (Do not enter without permission! Always make an appointment.)
Field Exam

Things to be aware of:

• Identification (always bring it)
• Dogs (especially on farms)
• Snakes (watch where you step)
• Poison ivy/poison oak (don’t touch)
• Plywood on the ground (don’t walk on it)
Field Exam

Things to be aware of:

- Water (wear a PFD)
- Insects (watch where you put your hands)
- Construction sites (hard hat, vest, safety glasses, proper footwear)
- Farm equipment (stay clear)
- Big trucks (don’t stand/walk behind)
Field Exam

Things to be aware of:

• Written notes are public records (be professional) and stick to the facts!
• Audio recordings are public records (be professional)
• Photos & videos are public records (be professional)
Field Exam

Things to be aware of:

• Gifts (Do not accept)
• Food (Do not accept)
• Fruits, vegetables, etc. (Do not accept)
• Drinks (No more than a glass of water. It is always better to just bring your own.)
• Offers of special favors (Quid pro quo – Do not accept!)
The Trust Water Rights Program allows Ecology to hold water rights for future uses without the risk of relinquishment. Water rights held in trust contribute to streamflows and groundwater recharge, while retaining their original priority date.
The Trust Water Rights Program provides flexibility to:

- **Bank** - We facilitate water banking to address water supply challenges.
- **"Park" water rights** - Individual water right holders can temporarily donate or "park" their water right when they are not using it in order to avoid relinquishment.

*Contact your regional office for guidance*
Showing of Compliance
RCW 90.44.100(3)

New or replacement well, no change needed if:

- Same body of public GW as the original well
- If original well not to be used - decommission
- Same published POW location
- No enlargement of Qi or Qa
- No impairment of other rights
- New well properly constructed
- “Showing of Compliance” filed
Consolidation of rights for exempt wells (RCW 90.44.105)

Consolidating a groundwater right exempt from the permit requirement under RCW 90.44.050:

- Through a change, an exempt use can be added to an existing GW permit or certificate
- From the same body of public groundwater
- The exempt well must be decommissioned
- Legally enforceable agreements to prohibit the construction of another exempt well
Consolidation of rights for exempt wells (RCW 90.44.105)

• Existing rights shall not be impaired
• Amount to be added to the holder's permit or certificate shall be the average withdrawal from the well, in gpd, for the most recent 5 year period prior to the date of the application
• Not less than 800 gpd/residential connection
• Not more than 5000 gpd total
The SEPA review process helps agency decision-makers, applicants, and the public understand how the entire proposal will affect the environment. SEPA can be used to modify or deny a proposal to avoid, reduce, or compensate for probable impacts.

May be related to issuing permits for private projects or constructing public facilities.
State Environmental Policy Act (SEPA)

WAC 197-11-800 Categorical Exemptions:

- 1 cfs or less of surface water
- For agricultural irrigation, the threshold is increased to 50 cfs, provided the project will not receive public subsidies
- 2,250 gpm or less of groundwater
- Not part of a larger project or a series of exempt actions that trigger SEPA

*If required, must be complete prior to the ROE*
Surface to Groundwater Changes

Foster v. Ecology, Yelm, & PCHB Supreme Court decision - These changes can result in delayed or dispersed impacts to stream flows.

Changing from a surface water use to a groundwater use could result in less overall impact to a protected river, but cause delayed effects that appear during different times of the year, potentially impairing instream flows.

If true, the change request is not approvable.
Upstream/Up-gradient Moves?

Can water rights be moved upstream or up-gradient?

• Typically – No, due to the potential for impairment of other rights or new impacts to a protected river or stream.

• OCPI – Used only for temporary situations

• With mitigation – Full mitigation is required
More on the Foster decision

Mitigation must be strictly in-kind, in-time, and in-place, the *Foster* decision limits our ability to approve mitigation plans that do not perfectly match the season and place of use in basins with stream closures or adopted instream flows that are not met.

There are few areas in the state where in-kind, in-time, and in-place mitigation water will be available.
Annual Consumptive Quantity (ACQ)

RCW 90.03.380(1)...to enable irrigation of additional acreage or the addition of new uses if such change results in no increase in the annual consumptive quantity of water used...
Annual Consumptive Quantity (ACQ)

ACQ - Estimated or actual annual amount of water diverted...reduced by the estimated annual amount of return flows, averaged over the 2 years of greatest use within the most recent 5 years of continuous beneficial use. *See POL-1210 & PRO-1210
Transferring Ownership of an Application or a Permit

It is not necessary to file a change application to transfer ownership of a water right application or permit, unless there will also be a change to the POD/POW, place, purpose, or period of use. Instead, an assignment form should be filed.

Most certificated water rights are appurtenant to the land containing the place of use and transfer with the land title.
Seasonal Changes

Seasonal changes are temporary transfers of water rights for periods of less than one year. At the end of the authorized period of change, the water right reverts back to the original place of use.
Family Farm Act (RCW 90.66)

Initiative Measure No. 59, approved 11/8/1977

Family Farm – “a geographic area including not more than 6000 acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having a controlling interest in no more than 6000 acres of irrigated agricultural lands in the state of Washington which are irrigated under rights acquired after December 8, 1977.”
Family Farm Act (RCW 90.66)

RCW 90.66.065 - Transfers or changes in purpose of family farm water rights. Carefully review!!!

• Ag irrigation to Ag irrigation
• For any purpose under a lease agreement
• For any purpose within an Urban Growth Area
• Conserved (surplus) water for any purpose
• To municipal – with a conservation requirement
• Must remain in the WRIA or Urban Growth Area
Applications for water transfers

Does the board have the time, capacity, and desire to take on a difficult or contentious application?

RCW 90.80.070 – “A board is not required to process an application filed with the board. If a board decides that it will not process an application, it must return the application to the applicant and must inform the applicant that the application may be filed with the department.”
Questions?

Buck Smith
Northwest Regional Office
Buck.smith@ecy.wa.gov
425-649-7147
What Happens After Ecology Receives the ROE/ROD

Scott Turner
Permitting Unit Supervisor
Department of Ecology
Central Regional Office
Once Ecology receives the ROE/ROD from a county water conservancy Board there is a period of up to 75 days for review of the documents.
Once the ROE/ROD is received at the appropriate regional office it is date stamped

It is then entered into our data base system and board is notified when the 45 day period begins

Upon receipt of the board’s ROE/ROD Ecology shall post the text of the board’s decision on the department’s website

The ROE/ROD is assigned to the permit writer who is charged with review of the documents
Time Frame

- Ecology must take action on the board’s decision within 45 days upon receipt.
- The 45 day period may be extended for an additional 30 days.
- If Ecology fails to act within the specified time, the board’s ROE/ROD becomes the final order of Ecology.
What Does Ecology Review

• The permit writer assigned the ROE/ROD will review:
  – The record of decision for compliance with state water laws and regulations
  – The record developed by the board in processing the application
  – Any other relevant information

• Review can also include letters of concern or support received within thirty days of the date Ecology received the Board’s ROE/ROD

• Ecology will not evaluate internal operations of the board as it reviews a board’s ROE/ROD
What Kind of Action can Ecology Take

• Affirm
• Modify
• Reverse
Ecology Affirms the Board’s Decision

- Ecology will affirm a board’s decision when:
  - The review reveals the decision is in compliance with all state water laws and regulations
  - All provisions in the ROE are inserted and current
Ecology Modifies the Board’s Decision

- Ecology will modify a board’s decision when:
  - Provisions need to be added or modified
  - Corrected calculations
    - Acreage
    - Mathematical errors
  - Items or statements made in the ROE need to be clarified
Ecology will reverse a board’s decision when:

- The decision contains “fatal flaws”
  - Public notice error
  - Failure to comply with state water laws
- Issues are of a scope or scale that it cannot be modified
Another Option

• If Ecology finds that the decision cannot be modified they can request that the board withdraw the decision and re-submit at a later date

• Ecology informs the board of the issues that should be clarified or changed
Ecology Concludes Review

• Ecology will issue an administrative order affirming, modifying or reversing the board’s decision

• Applicants and all parties will then have 30 days to appeal Ecology’s administrative order to the Pollution Control Hearings Board
Questions or Discussion
Water Conservancy Board Training
Writing the Report of Examination (ROE)

Scott Turner
Permitting Unit Supervisor
Department of Ecology
Central Regional Office
WAC 173-153-130 (1) through (3)
How are records of decision and reports of examination made by a water conservancy board?

- Adopted by a majority vote
- Must be in writing
- Approvals and denials must issue to both the applicant and ecology
- Becomes part of the public record
- Subject to review and final approval by ecology
WAC 173-153-130 (4)
What is included in a record of decision?

• ROD must be prepared on Ecology form number 040-105 provided on-line:
  • [https://fortress.wa.gov/ecy/publications/SummaryPages/ECY040105.html](https://fortress.wa.gov/ecy/publications/SummaryPages/ECY040105.html)
• States the conclusion of the board as to whether the application is denied or approved
• Serves as record of the individual vote or abstention of each participating commissioner
Board Name: __________________
WATER CONSERVANCY BOARD
Application for Change/Transfer
Record of Decision

Applicant Name: __________________ 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) _____________. The undersigned board commissioners certify that they each understand the board is responsible “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.” [WAC 173-153-130(5)] The undersigned therefore, certifies that each commissioner, having reviewed the report of examination, knows and understands the content of the report.

☐ 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:

<table>
<thead>
<tr>
<th>Water Conservancy Board Name:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chair Name:</td>
<td>Signature:</td>
</tr>
</tbody>
</table>

(choose one) ☐ Approve ☐ Deny ☐ Abstain ☐ Recuse ☐ Other (please explain)

<table>
<thead>
<tr>
<th>Water Conservancy Board Name:</th>
<th>Date:</th>
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</table>
WAC 173-153-130 (5) through (8)
What is included in a report of examination?

• (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.
WAC 173-153-130 (5) through (8)
What is included in a report of examination?

• (6) The report of examination will consist of …Water Conservancy Board Report of Examination, form number 040-106…

• The first three pages (i – iii) are detailed instructions for completing the ROE

• Download the most recent version of form 040-106 from Ecology’s website: https://fortress.wa.gov/ecy/publications/SummaryPages/ECY040106.html

• Choose the Microsoft WORD format rather than the .pdf/Acrobat version

• Provide Ecology with a single-sided (not duplex) hard copy for Ecology’s file
WATER CONSERVANCY BOARD
Application for Change/Transfer – Report of Examination

Do Not Submit these Instructions with your Application

Instructions and Form

IMPORTANT NOTE: These instructions are provided as a guide to water conservancy boards when writing a report of examination regarding a water right change application. “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.” [WAC 173-153-130(5)] It is also the responsibility of the board to ensure that the final report complies with the minimum requirements as provided in the Water Conservancy Board rule, WAC 173-153-130(6).

INTRODUCTION

There are two distinct sections within the report of examination (ROE) form.

1. **Front page** – All information found on page 1 including the demographic and application identification information, “Background and Decision Summary”, “Description of proposed work”, and “Development Schedule”. Each separate decision requires a unique and separate record of decision (ROD form) and report of examination front page form.

2. **Report** (narrative) – All information found under the section “Report.”

FRONT PAGE

Demographic and Application Identification

- Clearly identify whether the application is for a water right change.
What is included in a report of examination?

- (6)(f) Within a section entitled "provisions":
  - (i) 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;

- [https://ecology.wa.gov/About-us/Our-role-in-the-community/Partnerships-committees/Water-Conservancy-Boards](https://ecology.wa.gov/About-us/Our-role-in-the-community/Partnerships-committees/Water-Conservancy-Boards)
What is included in a report of examination?

- Ecology may request additional information from the water conservancy board regarding the application and the board's decision, in addition to the requirements of subsection (6) of this section.
(8) A board's record of decision must clearly state that the applicant is not permitted to proceed to act on the proposal until ecology makes a final decision affirming, in whole or in part, the board's recommendation. However, if ecology does not act on a board's recommendation within the time frame established in RCW 90.80.080, the applicant is allowed to initiate the water right transfer pursuant to the board's record of decision after that period of time has expired. It is advised that the applicant not proceed until the appeal period of ecology's decision is complete, in compliance with WAC 173-153-180.
Applications

• Application for Change/Transfer
  Record of Decision

• Application for Change/Transfer –
  ROE Instructions and Form

(Both in Notebook Tab 9 Y )
Writing the Report of Examination (ROE)

Questions?