

RCW 90.80.070 Applications for water transfers—Notice—Record of decision—Review—Alternate serving as commissioner. (1) A person proposing a transfer of a water right may elect to file an application with a water conservancy board, if a board has been established for the geographic area where the water is or would be diverted, withdrawn, or used. If the person has already filed an application with the department, the person may request that the department convey the application to the conservancy board with jurisdiction and the department must promptly forward the application. 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. An application to the board for a transfer shall be made on a form provided by the department. A board may require an applicant to submit within a reasonable time additional information as may be required by the board in order to review and act upon the application. At a minimum, the application shall include information sufficient to establish to the board's satisfaction that a right to the quantity of water being transferred exists, and a description of any applicable limitations on the right to use water, including the point of diversion or withdrawal, place of use, source of supply, purpose of use, quantity of use permitted, time of use, period of use, and the place of storage.

(2) The applicant for any proposed water right transfer may apply to a board for a record of decision on a transfer if the water proposed to be transferred is currently diverted, withdrawn, or used within the geographic area in which the board has jurisdiction, or would be diverted, withdrawn, or used within the geographic area in which the board has jurisdiction if the transfer is approved. In the case of a proposed water right transfer in which the water is currently diverted or withdrawn or would be diverted or withdrawn outside the geographic boundaries of the county or the water resource inventory area where the use is proposed to be made, the board shall hold a public hearing in the county of the diversion or withdrawal or proposed diversion or withdrawal. The board shall provide for prominent publication of notice of the hearing in a newspaper of general circulation published in the county in which the hearing is to be held for the purpose of affording an opportunity for interested persons to comment upon the application. If an application is for a transfer of water out of the water resource inventory area that is the source of the water, the board shall consult with the department regarding the application.

(3) After an application for a transfer is filed with the board, the board shall publish notice of the application and send notice to state agencies in accordance with the requirements of RCW 90.03.280. In addition, the board shall send notice of the application to any Indian tribe with reservation lands that would be, but for RCW 90.80.055(2), within the area in which the board has jurisdiction. The board shall also provide notice of the application to any Indian tribe that has requested that it be notified of applications. Any person may submit comments and other information to the board regarding the application. The comments and information may be submitted in writing or verbally at any public meeting of the board to discuss or decide on the application. The comments must be considered by the board in making its record of decision.

(4) If a majority of the board determines that the application is complete, and that the 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 transfer, subject to review by the director. In making its record of decision, the board must consider among other things whether the proposed transfer can be made without detriment or injury to existing water rights, including rights established for instream flows. The board must include in its record of decision any conditions that are deemed necessary for the transfer to qualify for approval under the applicable laws of the state. The basis for the record of decision of the board must be documented in a report of examination. The board's proposed approval must clearly state that the applicant is not permitted to proceed to effect the proposed transfer until a final decision is made by the director. In making its record of decision, the board must consider among other things whether the proposed transfer can be made without detriment or injury to existing water rights, including rights established for instream flows.

(5) If a majority of the board determines that the application cannot be approved under the applicable laws of the state of Washington, the board must make a record of decision denying the application together with its report of examination documenting its record of decision. The board's record of decision is subject to review by the director under RCW 90.80.080.

(6) When alternates appointed under the provisions of RCW 90.80.050(3) are serving as commissioners on a board, a majority vote of the board must include at least one commissioner appointed under the provisions of RCW 90.80.050(1).

(7) An alternate when serving as a commissioner in the review of an application before the board shall:

(a) Review the written record before the board and any exhibits provided for the review or provided at the hearing if a hearing was held;

(b) Review any audio or video recordings made of the proceedings on the application; and

(c) Conduct a site visit if a site visit by other commissioners acting on the application has been previously conducted.

(8) An alternate serving as a commissioner shall be guided by the conflict of interest standards applicable to all commissioners under RCW 90.80.120. The board shall provide notice of an alternate sitting as a commissioner to the applicant and other participants in proceedings before the board in a timely manner to provide sufficient time for any challenges for conflict of interest to be made prior to the board's decision on the application. [2004 c 10 § 4; 2001 c 237 § 11; 1997 c 441 § 9.]

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

Intent—2001 c 237: See note following RCW 90.66.065.