

WAC 173-153-110 What is involved in the examination of an application before a board? (1) Boards shall base their records of decision and reports of examination regarding a transfer application on applicable state laws and regulations. In addition to specific water law, boards must also consult and consider other relevant state laws, including, but not limited to, the Growth Management Act (chapter 36.70A RCW).

(2) Generally, a board should conduct a field examination of the site(s) identified in the transfer application, and clarify any unclear information by contacting and discussing the information with the applicant or other appropriate persons.

(3) All relevant information must be identified, discussed, and considered in the board's examination. This may include the need for a board to collect pertinent detailed hydrological or hydrogeological information regarding the site(s) involved in the proposal. Any person providing an engineering, hydrologic, geologic and/or hydrogeological analysis on behalf of an applicant with an application before a board must be licensed in accordance with chapter 18.43 or 18.220 RCW, as applicable. The analysis must be certified by the individual's professional stamp.

(4) A board may require an applicant to provide additional information at the applicant's expense, if that information is necessary to render an adequately informed record of decision on an application.

How are comments and protests considered during the examination of the water right transfer application?

(5) Boards may also request that commenters or protestors provide additional information regarding their comments if such information is necessary to render an adequately informed record of decision on an application. Boards may also discuss the concerns raised in comments and protests with the persons who filed them.

(6) Boards must consider all comments and protests received about a pending application, whether or not additional information is provided by the protestor or commenter.

(7) Ecology, as is the case with any public agency, may provide formal written or oral comments regarding the application under discussion at a public meeting of the board. However, if ecology does provide formal comments in the context of a public meeting, the comments shall not be taken as giving either technical assistance or direction to the board, any more than any other comments would be so considered.

What other entities should be consulted when a board examines an application?

(8) When public interest applies to the application evaluation or when there may be existing rights that could be impaired, boards shall determine whether an Indian tribe, watershed planning unit, or other governmental body is directly involved in planning or water management related to the source of water that would be affected by the application. If this is found to be the case, the board should consult the tribe, watershed planning unit, or other governmental body in the board's effort to obtain information concerning the application.

What other information must a board consider in its examination of the application?

(9) Boards must evaluate an application, including all information obtained by the board that is associated with the application, and determine whether or not the transfer as proposed is in accordance with applicable state laws and regulations. The board must also make a tentative determination as to the extent and validity of the water

right proposed to be transferred, as well as whether the transfer can be made without injury or detriment to existing rights. The board must evaluate a transfer proposal pursuant to RCW 90.44.100 as to whether the proposed transfer is detrimental to the public interest. Public interest shall not be considered when deciding whether to grant an application for change pursuant to RCW 90.03.380 exclusively.

(10) Boards shall ensure that the requirements of the State Environmental Policy Act (SEPA), chapter 43.21C RCW, and the SEPA rules, chapter 197-11 WAC, have been met before finalizing a record of decision. If a board concludes it is appropriate under WAC 197-11-922 through 197-11-944, the board may be the lead agency for SEPA compliance.

(11) A board shall consult with ecology if it encounters new, unusual, or controversial issues in the course of examining an application. Ecology will provide assistance as to how to proceed in accordance with existing state laws, rules, and current ecology policies and administrative practices.

(12) When a board receives an application to transfer a water right that is located in an area subject to an ongoing general water rights adjudication process, the board shall consult with ecology prior to taking any action on the application. Ecology will seek guidance from the pertinent superior court regarding the court's role in administering the water rights that are subject to the adjudication. Ecology shall then advise the board on whether and how the board may process applications.

[Statutory Authority: RCW 90.80.040. WSR 03-01-039 (Order 01-13), § 173-153-110, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-110, filed 11/17/99, effective 12/18/99.]