

WAC 173-153-150 What is ecology's review process of a board's record of decision? (1) Upon receipt of a record of decision and report of examination, ecology shall document and acknowledge the date of receipt of such documents in writing to the issuing board. Ecology will post on its internet site, generally within five business days, the record of decision, documenting the vote and signature of all board commissioners who participated in the decision, and the report of examination. For boards with the capacity to send signed documents electronically, ecology will post the record of decision and the report of examination generally within three business days of receiving the electronic version. The posted document will be referenced by both the board-assigned application number and by the ecology-assigned application number.

How does ecology review the record of decision?

(2) Ecology will review all records of decisions made by water conservancy boards. Upon receipt of a record of decision made by a board, ecology will review:

(a) The record of decision for compliance with state water laws and regulations;

(b) The record developed by the board in processing the application; and

(c) Any other relevant information.

(3) In reviewing a board's decision, ecology may consider any letters of concern or support received within thirty days of the date ecology receives the board's record of decision.

(4) Ecology will not evaluate the internal operations of a board as it reviews a board's record of decision. Exceptions are to the extent that such review is necessary to determine whether the board's decision was in compliance with state laws and regulations concerning water right transfers, including possible cases of a conflict of interest as identified in RCW 90.80.120.

What are ecology's potential review responses and how are the responses made?

(5) (a) Ecology may affirm, reverse, or modify the records of decision based upon the report of examination issued by boards.

(b) If ecology determines that a board's submitted decision was not adopted in accordance with WAC 173-153-130(1), which addresses the adoption of a decision by the board; WAC 173-153-050 (1) and (6), which address training requirements of board commissioners; RCW 90.80.070 (4) through (8), which address the minimum number of commissioners required to adopt a decision on an application and the requirements for an alternate commissioner to participate in the decision; or, RCW 90.80.055, which addresses additional board powers, the submitted record of decision, report of examination, and supporting documents shall be returned to the board without action. Ecology's forty-five-day review period shall not begin until the board has satisfied all requirements in the adoption of a record of decision listed in this subsection and resubmitted the decision in accordance with WAC 173-153-140.

(c) Ecology's decision will be made in the form of a written administrative order and must be issued within forty-five days of receipt of the board's record of decision by the ecology regional office, except that the forty-five-day time period may be extended an additional thirty days by ecology's director, or his or her designee, or at the request of the board or applicant in accordance with RCW 90.80.080. If ecology does not act on the record of decision within

the forty-five-day time period, or within the extension period, the board's record of decision becomes final.

(6) Ecology may issue an order affirming a board's decision. If ecology modifies the record of decision made by a board, ecology shall issue and send to the applicant and the board an order containing its modification of the record of decision. The order shall specify which part(s) of the record of decision ecology has modified. If ecology reverses the record of decision by the board, ecology shall send the applicant and the board an order reversing the record of decision with a detailed explanation of the reasons for the reversal.

Under what conditions may ecology remand a record of decision to a board?

(7) Ecology may consider conflict of interest issues during its final review of a board's record of decision. In accordance with chapter 90.80 RCW, if ecology determines that a commissioner should have been disqualified from participating in a decision on a particular application under review, the director, or his or her designee, must remand the record of decision to the board for reconsideration and re-submission of the record of decision. Upon ecology's remand, the disqualified commissioner shall not participate in any further board review of that particular application.

(8) Ecology'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 ecology's decision to affirm, modify, or reverse the record of decision after remand.

Can a board withdraw its record of decision from ecology?

(9) If ecology has not yet formally acted on a record of decision by a board, a board may withdraw the record of decision during the period allowed for ecology's review. If a board withdraws a record of decision, ecology shall remove the record of decision from its internet site and post a notice that the decision has been withdrawn. All of the associated documents submitted to ecology by the board with the record of decision will be returned to the board. A board may withdraw the record of decision under the following conditions:

(a) The board must follow chapter 42.30 RCW, the Open Public Meetings Act, in making a decision to withdraw the record of decision;

(b) The decision to withdraw the record of decision must be adopted by a majority of the quorum of the board; and

(c) The board must send a notice of withdrawal of a record of decision to ecology on a form provided by ecology and identified as Decision to Withdraw a Record of Decision, form number 040-107.

Who is notified of ecology's order relating to a record of decision?

(10) Ecology will send its order to all parties on the same day. The order must be sent by mail, within five business days of ecology reaching its decision, to:

(a) The board;

(b) The applicant;

(c) Any person who protested;

(d) Persons who requested notice of ecology's decision;

(e) The Washington department of fish and wildlife;

(f) Any affected Indian tribe; and

(g) Any affected agency.

What is the process should ecology fail to act on a record of decision?

(11) Except as specified in subsection (5) of this section, if ecology fails to act within the specified time after receipt of the

board's record of decision, the board's record of decision becomes the final order of ecology. If a board concludes that the time allowed for ecology to issue its order has lapsed, the board shall notify ecology, the applicant, any protestors, and any parties that have expressed interest to the board about the application that the time period has lapsed. If ecology agrees that the review period has lapsed, ecology will send an order to the board, and all entities listed in subsection (10) of this section, stating that the record of decision is final. If ecology disagrees with the board's conclusion, ecology shall work with the board to establish the beginning date of the review period based upon the date of receipt of the record of decision and report of examination by the ecology regional office.

[Statutory Authority: RCW 90.80.040. WSR 06-18-102 (Order 05-18), § 173-153-150, filed 9/6/06, effective 10/7/06; WSR 03-01-039 (Order 01-13), § 173-153-150, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-150, filed 11/17/99, effective 12/18/99.]