

# Chapter 173-165 WAC

## CERTIFIED WATER RIGHT EXAMINERS

### WAC

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**WAC 173-165-010 Purpose and authority of this chapter.** The purpose of this chapter is to establish procedures for implementing RCW 90.03.665, Certified water right examiners—Fees—Rules. The statute authorizes certified water right examiners to conduct final proof examinations of permitted water uses to support department of ecology (ecology) decisions on whether to issue water right certificates. The statute requires permittees, as explained herein, to hire a certified water right examiner to complete a proof examination. RCW 90.03.665(1) requires ecology to establish and maintain a list of certified water right examiners through a defined certification process. RCW 90.03.665(11) authorizes ecology to adopt rules appropriate to carry out the purposes of the statute.

[Statutory Authority: RCW 90.03.665(11), 43.27A.090(11), and 43.21A.-064(9). 12-24-031 (Order 11-03), § 173-165-010, filed 11/28/12, effective 12/29/12.]

**WAC 173-165-020 Definitions.** The definitions included in this chapter are intended solely for the implementation of this chapter. This applies to the definitions in this section and those in WAC 173-165-100, Compliance and enforcement.

**"Applicant"** means an individual who has submitted an application to become a certified water right examiner, but has not yet obtained certification.

**"Client"** means the water right permit or change authorization holder (permittee) that hires the certified water right examiner.

**"CWRE"** stands for "certified water right examiner" and, when used for clarification in this chapter, denotes elements of the CWRE process and function, such as the CWRE coordinator, certification under this chapter, the list of certified water right examiners, or the proof examinations, reports, and recommendations made by certified water right examiners under this chapter.

**"CWRE investigative committee"** means a group that may be formed to investigate or to review corrective action proposals if ecology suspects malfeasance, receives excessive complaints from clients, or finds a pattern of poor performance. The committee may be convened on an as needed basis at any time and may include:

- (a) The CWRE coordinator.
- (b) Regional water right permitting staff.
- (c) Other program staff or managers.
- (d) Other ecology staff or managers.
- (e) Assistant attorney(s) general.
- (f) Others with expertise appropriate to the process.

**"Permitted water use"** means a water use authorized by a water right permit or change authorization.

**"Permittee"** means the person or entity that holds the water right permit or change authorization.

**"Program"** means ecology's water resources program or its successor.

**"Proof examination"** means a field inspection of a water use authorized by a water right permit or change authorization to determine the quantity of water put to beneficial use and verify other aspects reported in the proof of appropriation.

**"Proof report of examination"** means the detailed account of the beneficial use of water verified by a proof examination, which the certified water right examiner submits to ecology to support ecology's decisions on issuing a water right certificate.

**"Qualified water conservancy board commissioner"** means an appointed commissioner of a water conservancy board who is in compliance with all training requirements and is serving within an unexpired term of appointment.

**"Revocation," "revoke," or "revoking"** means a CWRE certification is completely invalidated with sanctions.

**"Suspension," "suspend," or "suspending"** means temporary postponement or limitation of a certified water right examiner's certification authorities.

**"Water right certification"** includes water right certifications, superseding certifications, certificates of change, or amended claims.

[Statutory Authority: RCW 90.03.665(11), 43.27A.090(11), and 43.21A.-064(9). 12-24-031 (Order 11-03), § 173-165-020, filed 11/28/12, effective 12/29/12.]

**WAC 173-165-030 Certified water right examiner responsibilities.** (1) Certified water right examiners must qualify and apply as individuals and maintain their qualification under WAC 173-165-050 and RCW 90.03.665(2) throughout the period of their application and certification.

(a) If a person qualifies as a certified water right examiner through a hydrogeology, professional engineering, or land surveyor license in the state of Washington, he/she must maintain that licensure to remain qualified as a certified water right examiner unless he/she satisfies another criterion in RCW 90.03.665(2).

(b) Certified water right examiners must notify ecology within two business days if:

(i) Notified their license as a professional engineer, land surveyor, or registered hydrogeologist is suspended or revoked; or

(ii) No longer a qualified water conservancy board commissioner.

(2) The certified water right examiner must follow the CWRE rules of professional performance. The applicant must review the rules of professional performance as provided by ecology and acknowledge by returning a copy with his/her signature.

(3) Certified water right examiners must maintain the validity of their CWRE certification throughout the period that they accept clients, perform proof examinations, and submit proof reports of examination, or ecology may revoke their certification. Maintaining a valid certification includes, but may not be limited to:

(a) Maintaining CWRE qualification under RCW 90.03.665 and WAC 173-165-050.

(b) Completing and showing proof of eight hours of approved continuing education annually, as defined in WAC 173-165-090.

(c) Paying CWRE certification renewal fees in a timely manner, as defined in WAC 173-165-080(4).

(d) Complying with the conditions of any suspension order or probation agreement.

(4) A CWRE certification applies only to an individual, and not to any associate, business, organization, or other entity. The certified water right examiner must perform all aspects of the proof examinations, including field visits and technical evaluation, and is responsible for the full content of the associated proof reports of examination.

(a) If an entity employs a certified water right examiner, other employees of the same entity cannot perform the duties under RCW 90.03.665 or this chapter using the certified water right examiner's certification.

(b) Two or more certified water right examiners, regardless of whether they share a common employer, may perform work related to the same permit or change authorization only with the written permission of the client.

(c) Certified water right examiners must make full disclosure to all parties concerned of any personal stake or conflict of interest in projects or properties on which the certified water right examiner performs work.

(d) A certified water right examiner who is a water right holder, the employee of a water right holder, or otherwise has a vested interest in a water right permit or change authorization may perform the associated proof examination, but must comply with all requirements of RCW 90.03.665 and this chapter, and must disclose to ecology the relationship when submitting the proof report of examination.

(5) Upon review of a client's beneficial water use under a permit or change authorization, certified water right examiners are responsible for submitting a proof report of examination to the appropriate ecology regional office for ecology's review and decision making. The proof report of examination must be complete and legible, and:

(a) In the form authorized by ecology. Ecology will not accept changes to the authorized forms.

(b) Compliant with permit or change authorization conditions, state water law, and other known local, state, or federal regulations.

(c) Adequately supported by data, calculations, computations, and photographs.

(6) Certified water right examiners are responsible for the billing of clients and collection of fees. The state of Washington shall not be liable for a person's compensation as a certified water right examiner. The client shall pay any charges directly to the certified water right examiner, or his/her employer or chosen representative.

[Statutory Authority: RCW 90.03.665(11), 43.27A.090(11), and 43.21A.-064(9). 12-24-031 (Order 11-03), § 173-165-030, filed 11/28/12, effective 12/29/12.]

**WAC 173-165-040 Fees.** RCW 90.03.665(10) directs ecology to establish and collect fees for the examination, certification, and renewal of certification for certified water right examiners. Table 1 summarizes ecology's fee structure related to CWRE examination and certification under this chapter. Further detail on fees is contained in WAC 173-165-070 and 173-165-080.

Table 1

Type of fee	Amount	Due
Application	No fee to apply	Applicants should NOT include any fee when submitting their application
Examination	\$300	At least two weeks prior to the testing date
Certification fee	\$200	Prior to receiving certification
Certification renewal fee	\$100	Annually, prior to expiration of the current certification
Additional late fee for renewal up to 30 days after expiration	\$50	Within 30 days following expiration of the certification
Additional late fee for renewal 31 to 90 days after expiration	\$100	Within 90 days of expiration

[Statutory Authority: RCW 90.03.665(11), 43.27A.090(11), and 43.21A.-064(9). 12-24-031 (Order 11-03), § 173-165-040, filed 11/28/12, effective 12/29/12.]

**WAC 173-165-050 Minimum qualifications for CWRE certification.** (1) To be a certified water right examiner, you must meet at least one of the following qualifications:

(a) Licensed in Washington state as a:

(i) Professional engineer;

(ii) Professional land surveyor; or

(iii) Hydrogeologist.

(b) A qualified water conservancy board commissioner, as defined in WAC 173-165-020; or

(c) Holding five years applicable experience as defined in subsection (2) of this section, including at least three years of experience defined in subsection (3) of this section.

(2) The five years of applicable work experience includes direct individual and practical experience related to one or more of the following:

(a) Conducting water right proof examinations in Washington or another state, or performing comparable work in evaluating the beneficial use of water.

(b) Preparing water right documents for use in the adjudication of water rights.

(c) Working in private industry evaluating water right applications and preparing reports of examination for cost recovery or cost reimbursement contracts.

(d) Evaluating state water right applications, conducting field investigations for water right permits, and preparing reports of examination.

(e) Preparing or reviewing records of decision for county conservancy boards.

(3) The five years of work experience must include at least three years of any one of the following:

(a) Evaluating new water right applications and/or applications for change or transfer of a water right to support permit and/or change authorization decision making.

(b) Conducting field investigations and preparing tentative determinations of water rights related to water use.

(c) Verifying beneficial use of water.

(d) Regulating water rights as a stream patrolman or watermaster (RCW 90.03.070) or watermaster assigned to regulate water use within federal reclamation projects.

(e) Conducting proof examinations for issuance of certificates of water rights.

(f) Other qualifying experience, substituted year for year, as determined by ecology.

(4) Qualified applicants must maintain at least one of their qualifications throughout the duration of the application and certification periods. (See WAC 173-165-030.)

[Statutory Authority: RCW 90.03.665(11), 43.27A.090(11), and 43.21A.-064(9). 12-24-031 (Order 11-03), § 173-165-050, filed 11/28/12, effective 12/29/12.]

**WAC 173-165-060 Application process.** Submitting a completed application is the first step of the CWRE examination.

(1) Applicants should verify that they meet minimum qualification requirements under RCW 90.03.665(2) and WAC 173-165-050 prior to applying.

(2) Applicants must complete and submit to ecology an application for certified water rights examiner on an ecology-approved application form. Ecology will not accept changes to the application form.

(3) Ecology will not consider an application complete until receipt of:

(a) A completed CWRE application form without omissions, signed by the applicant.

(b) Any other documentation requested by ecology.

(4) Ecology will review each application based on RCW 90.03.665(2) and WAC 173-165-050.

(5) Ecology will notify each applicant in writing on whether his/her application is approved.

(a) If his/her application is approved, ecology will provide the applicant information on testing opportunities and submitting the required examination fee.

(11/28/12)

(b) If the applicant does not appear to meet the minimum qualifications or the application is not complete, ecology will return the application.

(c) If an applicant had a CWRE certification previously revoked under WAC 173-165-100, ecology may reject their application without regard to whether the applicant otherwise meets the minimum qualifications. Ecology may consider the following before approving the application:

(i) Whether five years has elapsed since the CWRE certificate was revoked.

(ii) The status of the applicant's qualifications including any professional licensure or water conservancy board membership.

(iii) The status of the incident(s) that originally required revocation of the CWRE certification.

(6) Application materials are considered public records and are subject to the Public Records Act, chapter 42.56 RCW.

[Statutory Authority: RCW 90.03.665(11), 43.27A.090(11), and 43.21A.-064(9). 12-24-031 (Order 11-03), § 173-165-060, filed 11/28/12, effective 12/29/12.]

**WAC 173-165-070 Examination process.** (1) Applicants must:

(a) Qualify for testing through the application process defined in WAC 173-165-060.

(b) Submit the three hundred dollar examination fee at least two weeks prior to the testing date.

(2) For applicants with a disability, ecology will provide accommodations consistent with the Americans with Disabilities Act. Applicants should make their request for accommodations as early as possible to provide reasonable notice.

(3) Ecology will notify applicants by mail of their examination result as either pass or fail.

(4) If an applicant fails the examination, he/she may:

(a) Repeat the examination no sooner than thirty days after testing.

(b) Apply to retake the examination by submitting a written request and the three hundred dollar examination fee to ecology.

(5) Only ecology staff or their delegates may review CWRE testing materials or past examinations.

[Statutory Authority: RCW 90.03.665(11), 43.27A.090(11), and 43.21A.-064(9). 12-24-031 (Order 11-03), § 173-165-070, filed 11/28/12, effective 12/29/12.]

**WAC 173-165-080 Certification.** (1) Ecology will issue the CWRE certificate and add the certified water right examiner's name to the CWRE list on ecology's web site within thirty days upon completion of the following:

(a) The applicant shows proof of qualifications through the application process;

(b) The applicant passes the CWRE examination;

(c) The applicant submits a signed copy of the CWRE rules of professional performance, as prescribed by ecology; and

(d) Ecology receives the two hundred dollar certification fee.

(2) The CWRE certificate allows the holder to conduct proof examinations in accordance with RCW 90.03.665 and

to submit proof reports of examination to support ecology decision making.

(3) The CWRE certificate does not constitute professional licensure for any related field including hydrogeology, engineering, or land surveying.

**(4) Certification renewal.**

(a) CWRE certifications expire annually on the month and day that the original CWRE certification was issued.

(b) Ecology will issue a renewal reminder letter to the certified water right examiner at the address of record, at least sixty days prior to the expiration of the current certification. The letter will provide the following information:

(i) The status of his/her continuing education credits.

(ii) Whether the certification is in good standing under RCW 90.03.665 and this chapter.

(iii) Whether proof of qualifications is required.

(iv) Directions for submitting the certification renewal fee and other required documentation.

(c) To renew certification, the certified water right examiner must submit to ecology, as directed in the renewal reminder letter and postmarked no later than the expiration date:

(i) A one hundred dollar renewal fee;

(ii) Proof of having completed any remaining continuing education credits due;

(iii) Proof of qualifications, if required; and

(iv) A certification renewal form or a letter requesting renewal of the CWRE certification.

(d) If a certified water right examiner does not renew his/her certificate by the expiration date, the certification expires and becomes invalid.

(i) The list of certified water right examiners on ecology's web site will indicate that the certification has expired.

(ii) There is a maximum ninety-day grace period after the expiration date for the certified water right examiner to renew the certification. Associated late fees will apply during the grace period as required under (e) of this subsection.

(iii) Late renewal during the ninety-day grace period will not delay the date the new certification will expire, or change the anniversary date regarding annual continuing education requirements.

(e) If the certified water right examiner fails to renew his/her certification by the expiration date as required under (c) of this subsection, the following late fees will apply:

(i) Renewal between one to thirty days after expiration of the certificate includes a late fee of fifty dollars, in addition to the one hundred dollar renewal fee.

(ii) Renewal between thirty-one to ninety days after expiration of the certificate includes a late fee of one hundred dollars, in addition to the one hundred dollar renewal fee.

(f) If a certified water right examiner fails to renew their certification before the end of the ninety-day grace period:

(i) Ecology will remove his/her name from the list of certified water right examiners.

(ii) He/she must successfully reapply, retest, and pay all related fees to become recertified.

[Statutory Authority: RCW 90.03.665(11), 43.27A.090(11), and 43.21A.-064(9). 12-24-031 (Order 11-03), § 173-165-080, filed 11/28/12, effective 12/29/12.]

**WAC 173-165-090 Continuing education.** (1) Each certified water right examiner must complete eight hours annually of continuing education in the water resources field.

(2) Ecology will provide information on the internet on continuing education opportunities for certified water right examiners.

(a) Ecology may grant credit for completing related training not listed on our web site at the discretion of the CWRE coordinator.

(b) The CWRE coordinator may approve nonformal educational activities, such as workshops or conferences for water resources professionals, as qualifying for continuing education credit, but may choose to grant credit at less than an hour-for-hour basis.

(3) Certified water right examiners may submit proof of their continuing education credits to the CWRE coordinator at any time.

(4) Ecology will notify certified water right examiners of their qualifying education status in their certification renewal letter.

(5) Ecology will not renew the CWRE certification until receipt of evidence that the certified water right examiner has completed the required continuing education hours.

(6) Ecology will apply continuing education hours earned in the following order:

(a) Overdue hours needed to renew certification during the ninety-day grace period.

(b) Hours needed for the next certification renewal.

(7) Certified water right examiners may not carry over continuing education hours for future credit in excess of the annually required eight hours.

[Statutory Authority: RCW 90.03.665(11), 43.27A.090(11), and 43.21A.-064(9). 12-24-031 (Order 11-03), § 173-165-090, filed 11/28/12, effective 12/29/12.]

**WAC 173-165-100 Compliance and enforcement.** (1) Ecology is authorized to take action under this rule to examine, certify, investigate, and enforce this rule against certified water right examiners and CWRE applicants. However:

(a) Certified water right examiners are hired and paid by water right permit or change authorization holders, and are not ecology employees.

(b) Ecology is not responsible for the direct supervision of a certified water right examiner.

(c) Ecology is not responsible for the contractual relationship between certified water right examiners and their clients.

(2) Nothing in this chapter is intended to prevent ecology from taking immediate action if it is critical to the safety of the public, agency staff, and others; or is critical to the protection of the water resource as otherwise authorized by law.

(3) Client complaints, issues of poor performance, and any indications of malfeasance should be referred to the CWRE coordinator. The CWRE coordinator may work with regional permitting staff and program management to determine what further action, if any, is appropriate, such as:

(a) Meeting with the certified water right examiner to discuss concerns and possible options for dealing with the problem.

(b) Providing technical assistance.

(c) Issuing a verbal or written warning.

- (d) Consulting with an assistant attorney general.
- (e) Presenting issues to agency senior management.
- (f) Filing a police report.
- (g) Performing a preliminary or full compliance investigation (see subsection (4) of this section).

(h) Convening the CWRE investigative committee as defined in WAC 173-165-020.

- (i) Taking other steps as appropriate for the complaint.

(4) Ecology or the CWRE investigative committee may perform a general, preliminary, or full compliance investigation to ensure that the public is being competently served, or in response to client complaints, indications of poor performance, or when ecology suspects malfeasance.

(a) Ecology may use general compliance investigations to assess elements of the CWRE program, or the program as a whole.

(b) Ecology may use preliminary investigations to determine whether a situation warrants any action or a full investigation.

(c) Ecology will use full investigations primarily when circumstances are uncertain but indicate a potential need for suspending or revoking a certified water right examiner's certification.

(5) When ecology or the CWRE investigative committee does a full compliance investigation of a certified water right examiner, except when doing so could compromise the investigation or potential prosecution, they will notify the certified water right examiner in writing:

(a) That the investigation is taking place, when the investigation is begun; and

(b) Of the results of the investigation, when the investigation is complete.

**Informal actions.**

(6) Ecology will use informal methods, which are not appealable, to pursue compliance with RCW 90.03.665 and this chapter, and to ensure the public is competently served. Informal methods include, but are not limited to:

(a) Spot-checking the work of certified water right examiners.

(b) Surveying or interviewing current and past clients.

(c) Providing technical assistance or training.

(d) Issuing verbal or written warnings, such as to advise on poor performance, give notice of one or more customer complaints, or to request actions to prevent violations before they occur (RCW 90.03.605 (1)(b)).

**Formal actions.**

(7) RCW 90.03.665(4) authorizes ecology to suspend or revoke the certification of a certified water right examiner based on poor performance, excessive complaints from their clients, or malfeasance. For the purposes of this chapter:

(a) **"Poor performance"** means work products or work behaviors that fail to meet accepted standards of professional behavior and performance, such as:

(i) Repeated submittal of incomplete, inaccurate, insufficiently detailed, or otherwise unacceptable proof reports of examination.

(ii) Failure to abide by the CWRE rules of professional performance (WAC 173-165-080 (1)(c)) or to meet statutory requirements.

(b) **"Excessive complaints"** means complaints that go beyond what is normal and reasonable. If ecology receives two or more complaints for an individual certified water right examiner in any twelve-month period, in determining whether complaints are excessive, ecology may consider the nature of the complaints, as well as the number of complaints relative to the number of proof examinations the certified water right examiner has completed in the same period.

(c) **"Malfeasance"** means wrongdoing or misconduct, such as an act that gives rise to civil liability for damages arising out of professional conduct; or that is harmful or contrary to law; or that is a violation of professional standards or ethical rules; or an act in violation of the public trust.

(8) Ecology will determine whether to suspend or revoke a CWRE certification.

(a) The CWRE coordinator or designee will discuss the recommendation, including the results of any investigation made, with program management.

(b) To suspend or revoke a CWRE certification, ecology will issue an administrative order. An order is a formal requirement to correct or prevent a documented violation and is an appealable action.

(i) Orders are issued by certified mail to the certified water right examiner's address on record or delivered in person.

(ii) The suspension or revocation is effective as of the date of formal notification to the certified water right examiner.

(c) Ecology is ultimately responsible for the content of the order to suspend or revoke a CWRE certification.

(9) Suspension is intended for the certified water right examiner to improve poor performance, resolve client complaints, or to acquire additional training; or ecology may suspend a certified water right examiner as a temporary measure during a compliance investigation.

(a) Suspension is for a period not to exceed one year.

(b) The suspension order shall state the terms for reinstatement of the certification, including the length of time to fulfill the requirements of the suspension before ecology will revoke the CWRE certification for failure to meet the terms of the suspension.

(c) Ecology may enter into a probation agreement with a suspended certified water right examiner that would allow him/her to continue to perform some or all CWRE services during her/his period of suspension.

(i) A probation agreement will be the equivalent of a conditional certification.

(ii) The probation agreement will identify the following:

(A) The conditions for and limitations of CWRE services that the certified water right examiner may perform.

(B) Any requirements for the certified water right examiner to fulfill the agreement, such as additional continuing education of a specific subject.

(C) Any requirements for retesting.

(D) Any other elements specific to the case.

(iii) Any probation agreement will be signed by the certified water right examiner and ecology program manager or designee.

(d) Certified water right examiners may renew their CWRE certification during the period of suspension, if they are in compliance with the suspension order and the condi-

tions of any probation agreement, and meet the conditions of renewal under WAC 173-165-080(4). If the certified water right examiner under suspension does not maintain his/her certification according to the renewal deadlines identified in WAC 173-165-080(4), ecology may revoke the certification as described in subsection (10) of this section.

(e) The certified water right examiner under suspension must abide by the terms of the suspension order and any probation agreement, and satisfy all remedial requirements, in addition to any statutory requirements, or ecology may revoke the certification as described in subsection (10) of this section.

(10) A revoked CWRE certification cannot be renewed.

(a) When a CWRE certification is revoked, to become recertified, the person:

(i) Must wait at least five years before ecology may accept her/his reapplication.

(ii) Must reapply, retest, and be recertified, as well as pay all associated fees.

(b) Even after the five years ((a)(i) of this subsection) have passed, ecology may choose to reject the application of a person whose certification has been revoked regardless of whether the applicant otherwise meets minimum qualifications (WAC 173-165-060 (5)(c)).

(11) Ecology may immediately revoke the certification of a certified water right examiner found liable or convicted for malfeasance in a court of law.

[Statutory Authority: RCW 90.03.665(11), 43.27A.090(11), and 43.21A.-064(9). 12-24-031 (Order 11-03), § 173-165-100, filed 11/28/12, effective 12/29/12.]

**WAC 173-165-110 Appeals.** All final written decisions of ecology pertaining to certified water right examiners and CWRE applicants under this chapter shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: RCW 90.03.665(11), 43.27A.090(11), and 43.21A.-064(9). 12-24-031 (Order 11-03), § 173-165-110, filed 11/28/12, effective 12/29/12.]

**WAC 173-165-120 Permittee rights and responsibilities.** (1) A permittee may develop all or a portion of the project and put water to beneficial use in compliance with his/her water right permit or change authorization. Development of the project and the measure of the beneficial use may be less than authorized, but may not exceed the authorized quantity or conditions of use.

(2) Once the project development ends and beneficial use of the water is established under the water right permit or change authorization, the permittee shall submit a notarized proof of appropriation form to the appropriate ecology regional office.

(3) Ecology will review the proof of appropriation form and, if determined appropriate, will respond in writing directing the permittee to hire a certified water right examiner. Ecology may waive the requirement to secure the services of a certified water right examiner if ecology has conducted the proof examination or determines that one is not necessary to issue a certificate of water right.

(4) As directed by ecology, the permittee must secure the services of a certified water right examiner from the ecology-

maintained CWRE list on ecology's web site to perform the proof examination and submit a proof report of examination to ecology.

(5) If ecology returns the proof report of examination to the certified water right examiner for correction under WAC 173-165-130(3), ecology will send the permittee a copy of the communication with the certified water right examiner.

(6) Until ecology has made a final decision (WAC 173-165-130), the permittee may withdraw the proof report of examination submitted by the certified water right examiner at any time during ecology's review period.

(a) To withdraw the CWRE proof report of examination, the permittee must submit to ecology the request to withdraw in writing, including the effective date and future intent of water use.

(b) Upon written withdrawal by the permittee, ecology will cease review of the proof report of examination.

(i) A copy of the withdrawn report shall remain within the associated water right permit or change authorization file.

(ii) Ecology may review the withdrawn report for comparison to any future report submitted and require explanations for any conflicting statements of fact or recommendations.

(7) Within thirty days of withdrawing the proof report or examination, the permittee must:

(a) Schedule a technical assistance meeting with the regional water resources program; and

(b) Define a course of action for moving the water right permit or change authorization from proof of appropriation stage to certification under RCW 90.03.330, which may include requesting an extension of the development schedule.

(8) Should the permittee not comply with this section, ecology may:

(a) Issue a final determination through an administrative order based on the information submitted, per WAC 173-165-130(5); or

(b) Cancel all or a portion of the change authorization.

[Statutory Authority: RCW 90.03.665(11), 43.27A.090(11), and 43.21A.-064(9). 12-24-031 (Order 11-03), § 173-165-120, filed 11/28/12, effective 12/29/12.]

**WAC 173-165-130 Ecology review and final decision making.** (1) Ecology has a maximum of sixty days to make the final decision on the CWRE proof report of examination unless otherwise requested in writing by the permittee as allowed under RCW 90.03.665(6).

(2) Ecology will not accept proof reports of examination from a certified water right examiner whose certificate is expired, revoked, or otherwise invalid.

(3) Ecology may return the proof report of examination for correction to the certified water right examiner and the permittee within thirty days of ecology's initial receipt of the documents.

(a) Ecology's initial review will be comprehensive to identify all deficiencies.

(b) Ecology shall document on the proof report of examination the date ecology returned the report to the certified water right examiner for revision.

(c) If a proof report of examination is returned to the certified water right examiner and permittee for correction, ecology's sixty-day clock stops.

(d) The certified water right examiner should return the corrected report within ninety days for ecology to complete its review. On receipt of the corrected report from the certified water right examiner, ecology has thirty days to issue a final decision regarding the water right certification.

(e) If the certified water right examiner returns the corrected report later than ninety days, ecology will determine it to be a new report and ecology's sixty-day review period begins again.

(4) If during the sixty-day review period, the permittee submits a request to withdraw the proof report of examination, so long as ecology has not yet made a final decision on certification of the water right, ecology will cease their review. Ecology may consider the withdrawal as evidence of the permittee's intent to cancel the permit or change authorization if the permittee fails to:

(a) Schedule a technical assistance meeting with regional program staff; and

(b) Define a course of action for moving the water right permit or change authorization from proof of appropriation stage to certification under RCW 90.03.330, as required under WAC 173-165-120(7).

(5) Within sixty days, ecology will make a final determination regarding the proof report of examination by:

(a) Issuing a recommendation to certify the beneficial use of water in a final administrative order.

(i) After the thirty-day appeal period, ecology will prepare the water right certificate based on their review of the CWRE proof report of examination and any other information within the record, and request certificate and recording fees from the permittee.

(ii) Ecology will issue the water right certification upon receipt of certificate and recording fees.

(b) Defining a course of action for moving the water right permit or change authorization to certification under RCW 90.03.330.

(c) Canceling the permit or change authorization by issuing an administrative order that identifies the reasons for the cancellation.

(d) Taking other actions deemed appropriate based on the CWRE proof report of examination and findings.

(6) If ecology's final decision on the proof report of examination is in conflict with the certified water right examiner's recommendation, ecology will identify in its administrative order the reasons for modifying or reversing the CWRE recommendation.

[Statutory Authority: RCW 90.03.665(11), 43.27A.090(11), and 43.21A.-064(9). 12-24-031 (Order 11-03), § 173-165-130, filed 11/28/12, effective 12/29/12.]