

Chapter 173-153 WAC

WATER CONSERVANCY BOARDS

WAC

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WAC 173-153-010 What are the purpose and authority of this chapter? The purpose of this chapter is to establish procedures the department of ecology (ecology), water conservancy boards, applicants, concerned agencies, and the public will follow in implementing chapter 90.80 RCW. Chapter 90.80 RCW authorizes establishment of water conservancy boards and vests them with certain powers relating to water right transfers. RCW 90.80.040 authorizes the department to adopt rules necessary to carry out the purposes of the statute.

[Statutory Authority: RCW 90.80.040. WSR 03-01-039 (Order 01-13), § 173-153-010, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-010, filed 11/17/99, effective 12/18/99.]

WAC 173-153-020 To what does this chapter apply? These procedures apply to the establishment of water conservancy boards in accordance with chapter 90.80 RCW and to:

(1) How such boards will function when processing water right transfer applications that are filed with a board or that are transferred to a board from ecology at an applicant's request;

(2) Reporting requirements of boards;

(9/6/06)

(3) How ecology will support and interact with boards; and

(4) How interested agencies and the public may participate in the board process.

[Statutory Authority: RCW 90.80.040. WSR 03-01-039 (Order 01-13), § 173-153-020, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-020, filed 11/17/99, effective 12/18/99.]

WAC 173-153-030 How are terms defined in this rule? For the purposes of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

"Application" means an application made on an ecology form identified as an Application for Change/Transfer to Water Right, form number 040-1-97 for a transfer of a water right, including those transfers proposed under authority of RCW 90.03.380, 90.03.390 and 90.44.100. A board may supplement the application with additional forms or requests for additional documentation. These forms and documentation become a part of the application.

"Board" means a water conservancy board pursuant to chapter 90.80 RCW.

"Bylaws" means the internal operating procedures, policies, or other guidance adopted by a board and designated as the board's bylaws.

"Consumptive use" means use of water whereby there is a diminishment of the water source.

"Director" means the director of the department of ecology.

"Ecology" means the department of ecology.

"Ecology regional office" means the water resources program at the ecology regional office designated to a board as the office where the board shall interact as identified within this chapter.

"Geographic area" means an area within the state of Washington in which an established board would have authority to process water right transfer applications. This area is identified by the legislative authority or authorities of the county or counties seeking to establish the water conservancy board. The area may be a single county, more than one county, a single water resource inventory area, or more than one water resource inventory area. If the identified geographic area contains all or part of more than one county, the counties involved must identify a "lead county" for certain administrative purposes.

"Lead county" means the county legislative authority with which ecology will communicate for administrative purposes in cases where a water conservancy board's geographic area includes more than one county legislative authority.

"Nonwater right holder" means, solely for the purpose of satisfying RCW 90.80.050(2) in regard to determining whether a potential water conservancy board commissioner is a "nonwater right holder," any party who:

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(1) Does not meet the criteria of a water right holder as defined in this section; or

(2) Receives water solely through a water distributing entity.

"Record of decision" means the written conclusion reached by a water conservancy board regarding a transfer application, with documentation of each board commissioner's vote on the decision. The record of decision must be on a form provided by ecology and identified as a Record of Decision, form number 040-105.

"Report of examination" means the written explanation, factual findings, and analysis that support a board's record of decision. The report of examination is an integral part of the record of decision. The report of examination must be on a form provided by ecology and identified as Water Conservancy Board Report of Examination, form number 040-106.

"Source" means the water body from which water is or would be diverted or withdrawn under an existing water right which an applicant has proposed to be transferred.

"Transfer" means a transfer, change, amendment, or other alteration of part or all of a water right, as authorized under RCW 90.03.380, 90.03.390 or 90.44.100.

"Trust water right" means any water right acquired by the state under chapter 90.38 or 90.42 RCW, for management in the state's trust water rights program.

"Water conservancy board coordinator" means the person designated by the director or his or her designee to coordinate statewide water conservancy board activities, communication, and training, and to advocate for consistent statewide implementation of chapter 90.80 RCW and chapter 173-153 WAC.

"Water right holder" means, solely for the purpose of satisfying RCW 90.80.020 (2)(d) and 90.80.050(2) in regard to determining whether the qualifications of petitioners to create a board and a potential water conservancy board commissioner are "water right holders," and as used within this rule, any individual who asserts that he or she has a water right and can provide appropriate documentation of a privately owned water right which is appurtenant to the land that they individually or through marital community property own or in which they have a majority interest. Exception to the definition of a water right holder for the purpose of determining a person's eligibility to be appointed as a commissioner is found in RCW 90.80.050(5).

[Statutory Authority: RCW 90.80.040. WSR 06-18-102 (Order 05-18), § 173-153-030, filed 9/6/06, effective 10/7/06; WSR 03-01-039 (Order 01-13), § 173-153-030, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-030, filed 11/17/99, effective 12/18/99.]

WAC 173-153-040 How is a water conservancy board created? All eligible entities identified in this section under subsection (1)(a) of this section are encouraged to consult with ecology when considering creation of a water conservancy board. In accordance with chapter 90.80 RCW, boards may have either three or five commissioners and must be established to serve an identified geographic area, as defined in WAC 173-153-030. A newly established board cannot include in the geographic area in which it will serve

any area that overlaps with a geographic area served by an existing board.

(1) Creation of a water conservancy board is accomplished by the following steps:

(a) A resolution or petition is proposed to or by the legislative authority or authorities of a county or counties;

(b) Public notice;

(c) Public hearing(s);

(d) Adoption of a resolution creating the board by the legislative authority or authorities of the county or counties;

(e) When a board is created by more than one county legislative authority, a lead county is designated;

(f) A petition is submitted to the director; and

(g) The director must approve the creation of a board.

Where is the resolution or petition calling for the creation of a board submitted?

(2) A resolution or petition calling for creation of a water conservancy board must be submitted to the legislative authority or authorities of the county or counties in which the board would serve.

Who can initiate a petition calling for the creation of a board?

(3) A resolution or petition may be initiated by the following entities:

(a) The legislative authority or authorities of the county or counties which would be served by the board;

(b) The legislative authority of an irrigation district, a public utility district that operates a public water system, a reclamation district, a city operating a public water system, or a water-sewer district that operates a public water system;

(c) The governing body of a cooperative or mutual corporation that operates a public water system serving one hundred or more accounts;

(d) Five or more water right holders, in the geographic area which would be served by the board, who divert or withdraw water for a beneficial use, or whose nonuse of water is due to a sufficient cause or an exemption pursuant to RCW 90.14.140; or

(e) Any combination of the above.

What information must be included in the proposed resolution or petition calling for the creation of a board?

(4) The resolution or petition must include:

(a) A statement describing the need for the board;

(b) Proposed bylaws that will govern the operation of the board;

(c) Identification of the geographic area within which the board would serve; and

(d) A description of the proposed method(s) for funding the operation of the board.

What notice is given to the public regarding the proposed creation of a board?

(5) A public notice must be published in a newspaper of general circulation in the county or, if the board would serve more than one county, a public notice must be published in a newspaper of general circulation in each county in which the board would serve. The notice(s) must be published not less than ten days and not more than thirty days before the date of a public hearing on the proposed creation of the board. The notice(s) shall describe the:

(a) Time;

(b) Date;

- (c) Place;
- (d) Purpose of the hearing; and
- (e) Purpose of the board.

Notice must be sent to the ecology regional office at the time of publication of the public notice, and an effort shall be made to ensure that any watershed planning unit and Indian tribe with an interest in water rights in the area to be served by the board also receives the notice.

How many public hearings must be held for the creation of a board?

(6) At least one public hearing on the proposed creation of the board must be held by the legislative authority of each county in which the board would serve.

What must be included in the adopted resolution which establishes a board?

(7) If the legislative authority or authorities of the county or counties decide to establish a board after the public hearing(s) a resolution must be adopted by the legislative authority or authorities of the county or counties, approving the creation of the board. The resolution must describe or include:

- (a) The need for the board;
- (b) The geographic area to be served by the board;
- (c) The method or methods which will be used to fund the board;
- (d) Whether the proposed board will consist of three or five commissioners;
- (e) The designated lead county if a board is proposed which would serve in more than one county; and
- (f) A finding that the creation of the board is in the public interest.

What is included in a petition to ecology for the creation of a board?

(8) The petition submitted to ecology to create the board must include the following:

(a) A copy of the resolution or petition to or by the legislative authority or authorities of the county or counties calling for the creation of a board. If a board is proposed which would serve in more than one county, the resolution shall be provided by the lead county as designated under subsection (7)(e) of this section. If five petitioners meeting the definition of a water right holder in the county or counties which initiate the petition, the petition must also include the names and addresses of the petitioners;

(b) A summary of the public testimony presented during the public hearing(s) conducted by the legislative authority or authorities of the county or counties in response to the resolution or petition to create a board. The summary shall be clearly identified and include the date of the hearing;

(c) A copy of the resolution adopted by the legislative authority or authorities of the county or counties approving the creation of a water conservancy board. The resolution must include all elements described in subsection (7) of this section; and

(d) A copy of the board's proposed bylaws.

What is the process for the director to approve or deny the creation of a water conservancy board?

(9) Upon submission to the water conservancy board coordinator of the required documentation pursuant to subsection (8) of this section, the director will determine whether the creation of a water conservancy board will further the purposes of the law and be in the public interest. The public

interest includes, but is not limited to, whether ecology has sufficient staffing resources to provide the necessary training, monitoring, and technical assistance to the board and to make timely responses to the board's records of decisions.

(10) The director's determination regarding creation of the board shall be made within forty-five days of receiving all items listed in subsection (8) of this section.

(11) If creation of a board is approved, ecology will include in its notice of approval any unique conditions or provisions under which the approval is made, if any, and a description of the initial training requirements for board commissioners as outlined in WAC 173-153-050.

[Statutory Authority: RCW 90.80.040. WSR 03-01-039 (Order 01-13), § 173-153-040, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-040, filed 11/17/99, effective 12/18/99.]

WAC 173-153-042 How are water conservancy board commissioners and alternates appointed and the length of their terms determined?

How do counties notify ecology of board commissioner's and alternate's appointments and terms?

(1) Upon approval of a new board by ecology, or upon approval of restructuring the number of commissioners on an existing board, the legislative authority of the county or the lead county shall submit to ecology's water conservancy board coordinator a written statement identifying the individuals appointed to the board. The statement must include:

(a) The name, mailing address, and phone number or other contact information of the commissioners and/or alternates;

(b) The terms of office of the commissioners; these terms of office must be staggered as described in RCW 90.80.050 (1).

What happens when a board commissioner's term expires or a board position becomes vacant?

(2) Upon the expiration of a board commissioner's or alternate's term, the appropriate legislative authority or authorities of the county or counties shall either:

(a) Reappoint the incumbent commissioner or alternate; or

(b) Appoint a new commissioner or alternate to the board. A written statement including the information as described in subsection (1) of this section shall be submitted to ecology's water conservancy board coordinator.

(3) In the event a board position becomes vacant, the legislative authority or authorities of the county or counties shall appoint a new commissioner in accordance with RCW 90.80.050(2). A statement as described in subsection (1) of this section must be submitted to ecology's water conservancy board coordinator. The new commissioner or alternate shall fill the vacancy only for the remainder of the unexpired term and, upon completion of the unexpired term, may be reappointed, as described in subsection (2) of this section, to serve a full six-year term.

(4) If a board commissioner or alternate is reappointed to a position previously held by that commissioner or alternate within one year of resigning the position or within one year of the expiration of the commissioner's or alternate's term of service, then the original appointment date will be considered as the appointment date of record.

What are the terms of board commissioners and alternates?

(5) Initial terms of commissioners appointed to a newly created board shall be staggered as described in RCW 90.80.050. All alternate positions shall be for six-year terms.

(6) Upon the expiration of the initially appointed commissioners' terms, all subsequent appointments shall be for six-year terms.

(7) The initial terms of office of board commissioners on a restructured board shall be staggered as set forth in RCW 90.80.050. As each of the commissioners' term of office expires, newly or reappointed commissioners shall all be appointed to six-year terms.

How would an appointed board commissioner or alternate resign the position?

(8) A board commissioner or alternate may resign the board position by submitting a letter of resignation to the appointing county or counties. A copy of the resignation letter must be submitted to the water conservancy board coordinator by either the resigning board commissioner or alternate or by the board.

What is the responsibility of a board in notification of board vacancies?

(9) It is the responsibility of the board to notify the appointing county(ies) and the water conservancy board coordinator that there is a board commissioner vacancy.

(10) The appointing county(ies) and the board will determine and conduct a process to fill the commissioner vacancy in accordance with subsection (3) of this section.

[Statutory Authority: RCW 90.80.040. WSR 06-18-102 (Order 05-18), § 173-153-042, filed 9/6/06, effective 10/7/06; WSR 03-01-039 (Order 01-13), § 173-153-042, filed 12/9/02, effective 1/9/03.]

WAC 173-153-043 How can a board's authority be revoked or the board dissolved?**Revocation:**

(1)(a) Ecology may revoke legal authority of a board to make any decisions regarding water right transfers for reasons which include, but are not limited to, the following:

(i) If the board fails to issue a record of decision for a period of two years or more from the date the board was approved or from the date that the last record of decision was issued; or

(ii) If the board demonstrates a pattern of ignoring statutory and regulatory requirements in its processing of applications or in its records of decision; or

(iii) If requested by the legislative authority or authorities of the county or counties that called for the board's formation.

(b) The board will be allowed thirty days to respond to any revocation before it becomes effective. Ecology may reverse the revocation based upon the board response.

Dissolution:

(2)(a) The legislative authority of a county or lead county may adopt a resolution to dissolve a board.

(b) Ecology may petition the legislative authority of the county or lead county, with a copy to the board, for dissolution of a board.

(c) Upon resolution by the legislative authority of the county or lead county to approve the dissolution of a board,

the board will be allowed thirty days after the date of the resolution to respond to the petition for dissolution.

(d) The resolution by a county or lead county to approve the dissolution of a board will become effective thirty days after adoption of the resolution.

(e) The legislative authority of the county or lead county may reverse the dissolution based upon the board's response.

[Statutory Authority: RCW 90.80.040. WSR 03-01-039 (Order 01-13), § 173-153-043, filed 12/9/02, effective 1/9/03.]

WAC 173-153-045 What is the process for restructuring a board? (1) A board may be restructured as to the number of commissioners on the board and the geographic area of its jurisdiction.

(2) A board, a county legislative authority, or a lead county legislative authority may request to restructure an existing board within its geographical jurisdiction. It is suggested that the legislative authority or authorities of the county or counties and the existing board communicate and work cooperatively during the board restructuring process.

(3) If a request is made to restructure an existing board to a multicounty board, WRIA board, or multi-WRIA board, the county legislative authority with the existing board must determine if the restructured board would include geographic areas within an additional county or counties. If the restructure includes a geographic area of another county, the county legislative authority or all county legislative authorities of the affected counties must agree:

(a) To the number of board commissioners serving on the board;

(b) Whether the commissioners and alternates currently appointed to and serving on the existing board or boards shall continue in that capacity;

(c) That areas within the county may be included within the geographic jurisdiction of the multicounty, WRIA, or multi-WRIA board.

(4) If the county legislative authorities included in the restructuring cannot agree to the terms of the restructure using an existing board, the county or counties in which a county legislative authority already has an established board may dissolve the existing board and work cooperatively with the other county legislative authority or county legislative authorities to establish a new board.

(5) The legislative authority or authorities of the pertinent county or counties shall hold a public hearing and adopt a resolution including:

(a) The manner of restructuring and the need for restructuring the board;

(b) The number of commissioners to serve on the board;

(c) The proposed geographic area of jurisdiction of the board;

(d) If the proposed geographic area of jurisdiction is restructured to include more than one county legislative authority, the legislative authorities of each county included within the restructuring shall identify a lead county; and

(e) A summary of the public testimony presented during the public hearing(s) conducted by the legislative authority or authorities of the county or counties in response to the resolution to restructure a board. The summary shall be clearly identified and include the date of the hearing.

(6) Upon submission to the water conservancy board coordinator of the required documentation pursuant to subsection (3) of this section, the director will determine whether the restructuring of a board will further the purposes of the law and be in the public interest as described in WAC 173-153-040(10).

(7) The director's determination to approve or deny restructuring of the board shall be made within forty-five days of receiving all items listed in subsection (5) of this section.

(8) If the board restructuring is approved, ecology will include in its notice of approval any unique conditions or provisions under which the approval is made, if any, and shall identify the date the restructuring of the board will take effect. The director shall also identify any additional training required of the board if it assumes jurisdiction of a new geographic area.

[Statutory Authority: RCW 90.80.040. WSR 06-18-102 (Order 05-18), § 173-153-045, filed 9/6/06, effective 10/7/06; WSR 03-01-039 (Order 01-13), § 173-153-045, filed 12/9/02, effective 1/9/03.]

WAC 173-153-050 What are the training requirements for board commissioners and alternates?

What training is required for newly appointed board commissioners and alternates?

(1) Every commissioner and alternate of a board shall complete a training program provided by ecology:

(a) Before participating in any decision concerning a water right transfer application being considered by the board;

(b) Within one year of appointment to the board by the county legislative authority. If the training program is offered and is not completed within one year of appointment to the board, ecology may inform the county and request the county to seek the commissioner's resignation;

(c) Not more than one year prior to the commissioner's or alternate's appointment to the board by the county legislative authority. If the training program is completed by board administrative staff or other participating noncommissioners more than one year prior to subsequent appointment to the board, the commissioner will be required to repeat the training.

(2) Attendance at a training session for new commissioners shall be limited to board commissioners, their administrative staff, board alternates, and individuals providing training. Due to the complexity of the training and the need to provide adequate time to focus on questions from board commissioners, the number of participants attending each training session shall be left to the discretion of the water conservancy board coordinator. Training for new commissioners shall be scheduled depending on, but not limited to:

(a) Whether ecology has sufficient staffing resources to provide the necessary training; and/or

(b) Whether there are sufficient numbers of board commissioners and/or alternates needing training.

(3) Successful completion of the training program will:

(a) Consist of at least thirty-two hours of instruction, from or sponsored by ecology, regarding hydrology, state water law, state water policy, administrative and judicial case law developments, field practices, evaluation of existing

water rights, and practical experience working with ecology staff on applications for water right transfers;

(b) Require demonstrating an understanding of course materials during training, and demonstrating sufficient mastery of the training curriculum through an examination administered by an ecology employee upon completion of training; and

(c) Only be recognized and tracked by ecology for appointed commissioners and alternates.

(4) If a board is restructured to modify the geographic area, the director may require additional training of all board commissioners.

(5) Upon a water conservancy board commissioner's or alternate's successful completion of the training, ecology will certify such completion in writing to the county or lead county of the geographic area served by the board. A copy of this letter shall also be sent to the board.

Are there continuing education requirements for board commissioners and alternates?

(6) After completing one year of service on a water conservancy board, each following year prior to the anniversary of their appointment date to the board, commissioners and alternates must complete an additional eight hours of continuing education provided or approved by ecology. Each commissioner and alternate shall complete the minimum continuing education requirement before participating in any decision concerning a water right transfer application being considered by a board.

(7) The anniversary date for a board commissioner or alternate serving on more than one board concurrently will be determined by the earliest of all combined board appointment dates.

(8) If less than six months has passed between the termination of service as a commissioner or alternate and appointment to any board as a commissioner or alternate, any current continuing education credit received during the last twelve months of the period of service with the previous board will apply to the new term under the new date of appointment in accordance with WAC 173-153-042. If a period of greater than six months has passed between the termination of service as a commissioner or alternate and appointment to any other board as a commissioner or alternate, any current continuing education credit received during the period of service with the previous board will not apply to the new term under the new date of appointment.

(9) Each board commissioner and alternate must ensure his or her own eligibility and remain current on continuing education. Eligibility of a board commissioner or alternate could become a basis for ecology's reversal of a record of decision or an appeal by a third party of ecology's final administrative order.

(10) Ecology may, at its discretion, and in response to requests, provide continuing education training periodically. Ecology may also combine training for more than one board. Attendance at continuing education sessions provided by ecology water resources program shall generally be limited to board commissioners, administrative staff to boards, board alternates, and individuals providing training. Ecology may, at its discretion, and in response to requests, invite other identified entities to participate in continuing education sessions.

How can a board commissioner or alternate receive credit for continuing education not provided or sponsored by ecology water resources program?

(11) Continuing education training requirements may be fulfilled through training not provided or sponsored by ecology's water resources program. However, such training will be accepted only if it is reported to ecology on a form provided by ecology and identified as the Water Conservancy Board Training Credit Request Form, form number 040-104, and approved at ecology's discretion.

(12) To receive continuing education credit for participating in a training activity sponsored by another entity other than ecology water resources program, a Water Conservancy Board Training Credit Request Form, form number 040-104:

- (a) Must be used;
- (b) Must be submitted to the water conservancy board coordinator at ecology;
- (c) Must include all required information. If the form is incomplete, it will be returned to the commissioner or alternate requesting the credit;
- (d) Must include documentation of course attendance. If attendance documentation is not provided, a written summary of the training activity and information learned must be included;

(e) Must provide enough information to justify the hours requested;

(f) Will only be accepted by ecology after completion of the commissioner's or alternate's participation in the training activity.

(13) The complete training credit request form identified under subsection (12) of this section will be reviewed as expeditiously as possible by ecology. The hours credited to the commissioner or alternate will be documented by ecology in a letter to the commissioner or alternate requesting the training credit. A copy of the letter will be sent to the ecology designated regional representative and the water conservancy board.

(14) The approved credit hours count toward a commissioner's or alternate's eligibility only upon the receipt by the commissioner or alternate of written confirmation from ecology.

(15) The hours credited in subsection (13) of this section are effective based on the date of the letter issued by ecology approving the training.

(16) Training means that the commissioner or alternate participates in a forum specifically intended for learning from another person such as an author, instructor, speaker, or presenter.

(17) Reasonable and appropriate continuing education subjects that directly relate to water conservancy board authorities and responsibilities include, but are not limited to:

- (a) State water law;
- (b) State water policy;
- (c) Administrative and judicial case law developments;
- (d) Field practices;
- (e) Evaluation of existing water rights;
- (f) Hydrology;
- (g) Technical writing;
- (h) Other related topics.

(18) Reasonable and appropriate continuing education activities that directly relate to water conservancy board authorities and responsibilities include, but are not limited to:

- (a) Seminars;
- (b) Conferences;
- (c) Classes;
- (d) Presentations given by others;
- (e) Readings. Readings may include books on water resource issues or law, proceedings and papers associated with conferences related to subjects included in subsection (17) of this section;
- (f) Field experiences; and
- (g) Research completed for a presentation, speech, or instruction given by the board commissioner or alternate.

(19) Examples of activities not considered reasonable and appropriate continuing education include, but are not limited to:

- (a) Meetings in which the commissioner or alternate acts as a member of a committee, or integral participant in proceedings, appeals, or litigation;
- (b) Presentations, speeches, or instruction personally made by, or readings authored by, the commissioner or alternate requesting the training credit;
- (c) Work done by a commissioner or alternate as part of the direct responsibilities of the water conservancy board such as:
 - (i) Field examinations;
 - (ii) Investigation of a water right change application;
 - (iii) Discussions of applications;
 - (iv) Technical assistance received specific to an application; and
 - (v) Litigation initiated by a water conservancy board, or a board commissioner or alternate or litigation initiated by an entity against the water conservancy board or board commissioner or alternate;
- (d) Topics that do not directly relate to water conservancy board authorities and responsibilities.

(20) Board commissioners are encouraged to report to the water conservancy board coordinator all relevant continuing education received. Ecology will track all training received and reported by board commissioners and alternates as required in subsections (11) through (19) of this section. Any continuing education hours received and reported beyond the required eight hours annually will be documented and kept on file at ecology. Continuing education in excess of the required eight hours cannot be carried over to the next year.

[Statutory Authority: RCW 90.80.040. WSR 06-18-102 (Order 05-18), § 173-153-050, filed 9/6/06, effective 10/7/06; WSR 03-01-039 (Order 01-13), § 173-153-050, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-050, filed 11/17/99, effective 12/18/99.]

WAC 173-153-060 What is the scope of authority of a water conservancy board? (1) A board has authority to:

- (a) Evaluate water right transfer applications and issue records of decision and reports of examination for water right transfers;
- (b) Act upon the transfer of water rights to the state trust water right program, when doing so is associated with an application to transfer a water right. Boards are encouraged to

immediately contact ecology for technical assistance when acting on changes involving trust water rights;

(c) Establish and maintain a water right transfer information exchange program regarding the sale and lease of water rights; and

(d) Perform other activities as may be authorized under chapter 90.80 RCW, subject to other applicable state laws and regulations.

How does a board process a water right change application?

(2) A board may accept for processing an application to transfer a surface or groundwater right if the water right is currently diverted, withdrawn, or used within or, if approved, would be diverted, withdrawn, or used within the boundaries of the geographic area in which the board has jurisdiction, exceptions to this are stated in subsection (7) of this section. The application may be for a permanent or temporary use.

(a) The board should promptly request from the department a copy of the water right file related to the water right transfer application filed with the board. The department will comply with the request at no charge to the board.

(b) The board shall investigate the application and determine whether the proposal should be approved or denied and, if approved, under what conditions, if any, the approval should be granted.

(c) As part of the process described in subsection (2)(b) of this section, boards should determine whether a watershed planning unit is involved in planning related to the source of water that would be affected by the application being considered. If so, the board should notify the planning unit of the application, and consider comments from the watershed planning unit prior to issuing its record of decision.

(3) Decisions on applications must be made by a board in the order in which the applications were originally accepted by the board. Exceptions are outlined in RCW 90.03.380 and chapter 173-152 WAC.

(4) Boards must take into consideration the effect of a proposed transfer on the availability of water for, or possible impairment of, previously filed transfer applications for water from the same source regardless of the order in which applications are processed. This includes any applications for transfers filed with ecology or any other water conservancy board. Ecology will cooperate with boards to resolve any problems associated with conflicting applications.

(5) Neither the annual quantity nor the instantaneous quantity of water tentatively determined by the board to be associated with a water right may be increased. Uses may not be added and the acreage irrigated may not be expanded, except in the circumstances allowed in RCW 90.03.380, in which the annual consumptive use under the water right is not increased.

(6) As described in RCW 90.66.065, under a family farm permit, surplus waters made available through water-use efficiency may, subject to laws including WAC 173-152-110, be transferred to any purpose of use that is a beneficial use of water.

(7) Any water right or portion of a water right that has not previously been put to actual beneficial use cannot be transferred, except as authorized by RCW 90.44.100, or RCW 90.03.395 and 90.03.397.

Where can an applicant file a water right change application?

(8) If a board has been established in an area where an applicant wishes to apply for a water right transfer, applicants have the option of applying either directly to ecology or to a board.

What happens if two boards have overlapping jurisdictions?

(9) Overlapping jurisdiction occurs because boards may transfer rights into and out of their geographic area. Water conservancy boards may negotiate inter-board agreements to determine which board will act in instances of overlapping jurisdiction. Boards are advised to research applicable law, including chapter 39.34 RCW, the Interlocal Cooperation Act, prior to entering into any agreement. Any such agreement must be filed with the water conservancy board coordinator within fifteen days of its effective date.

(10) In circumstances in which more than one board may have authority to process water right transfers in a particular area, but the boards have not negotiated an inter-board agreement as specified in subsection (9) of this section, an applicant may file an application with either board. For example, if one board has authority to transfer the applicant's water right out of its jurisdiction, while another board has authority to transfer the water right into its jurisdiction, the applicant can apply to either board.

[Statutory Authority: RCW 90.80.040. WSR 03-01-039 (Order 01-13), § 173-153-060, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-060, filed 11/17/99, effective 12/18/99.]

WAC 173-153-070 What does an applicant need to know about filing an application for transfer of a water right?

How are applications accepted for processing by a board?

(1) Ecology will provide water right transfer application forms and applicant instructions to boards, which will make them available to the public upon request. All applications to a board must be made using the water right application for change/transfer form supplied by ecology, form number 040-1-97.

(2) Boards and ecology shall inform all applicants that the decision to file a transfer application with a board rather than directly with ecology is solely at the discretion of the applicant, provided a board is active in the area addressed by the transfer application.

(3) A water right transfer application is considered filed when it is received by a board commissioner, or a designated administrative support person for a board at the location designated by the board.

(4) A separate application must be filed for each water right that is proposed to be transferred.

(5) A majority vote of a quorum of a board is required to accept a complete application for processing.

What must a complete application include?

(6) Boards shall require that applications submitted directly to them are complete and legible. A complete application shall:

(a) Contain the information requested on the application form as applicable.

(b) Include all required signatures.

(c) Be accompanied by such maps and drawings, in duplicate, and such other data or fees, as may be required by the board. Such accompanying data shall be considered as part of the application as described in RCW 90.03.260.

(7) A board may request that an applicant provide additional information as part of the application by requiring, for example, that the applicant complete additional forms supplemental to the standard application or that applicant prepare and/or provide specific reports regarding aspects of the application.

How is an application number assigned to a water right transfer application filed with a board?

(8) The board shall assign a unique number to a water right transfer application upon acceptance of the application by the board.

(9) The number assigned by the board to the water right transfer application shall be written in ink within the "office use only" space provided on the application for the application number.

(10) The water right transfer application, public notice, record of decision, and report of examination produced by the board in processing the application shall reference the board-assigned number.

(11) The unique application number is assigned in accordance with the following three-part format:

(a) The first part of the board-assigned application number will identify the board that has accepted the application as follows:

(i) Boards having jurisdiction within a geographic area that is based upon a county boundary or the boundary of multiple counties will begin all application numbers with the first four letters of the name of the county or of the lead county. For example, a board with jurisdiction within Kittitas County will begin each application number with the letters "KITT."

(ii) Boards that have jurisdiction within a geographic area that is based upon a water resource inventory area (WRIA) or multiple WRIsAs will use the number of the WRIA of jurisdiction or, in the case of multi-WRIA boards, the WRIA of jurisdiction associated with the water right.

(b) The second part of the board-assigned application number will be the last two digits of the year in which the application was accepted. For example, applications that are accepted during the year 2003 will use the digits "03."

(c) The third part of the board-assigned application number will be a sequential two-digit number beginning with the number "01" for the first application accepted after the effective date of this rule and beginning with number "01" for the first application accepted by the board during each subsequent calendar year.

(d) A dash (-) will be used to separate the three parts of the application number as provided within (a), (b), and (c) of this subsection. For instance, the first application accepted by the Kittitas County water conservancy board during the year 2003 will be assigned number KITT-03-01.

Can applications before a board also be considered filed with ecology?

(12) The board must forward the complete original application form upon which the board has legibly written the board-assigned application number in the "office use only" space to the ecology designated regional representative

within five business days of the date the board accepts the application for processing.

(13) Within thirty business days from the date ecology receives the application from the board, ecology will assign a state water right change application number to the application and inform the board of the assigned number. The number assigned by ecology will be used for ecology's internal administrative purposes, including the recording of the application within the state water right record. The ecology-assigned number need not be used by the board in processing the application, including within the public notice.

(14) Ecology will open and maintain a file regarding the application for permanent recordkeeping. The application will not be considered as part of ecology's active application processing workload while the application is being processed by the board, but upon receipt of the application by ecology, the application is considered to be dual-filed with both the board and ecology. The application will retain a place in line with ecology based upon the date of acceptance by the board without payment of state examination fees as long as the board is processing the application.

(15) Ecology shall not act on the application unless it is notified by the board that the board has declined to process the application and upon receiving a written request from the applicant that ecology process the application. Upon written request from the applicant that ecology process the application, the required state examination fee will be due. Ecology shall notify the applicant that examination fees are due to ecology. The applicant must submit the required state examination fee within sixty days after the written request to ecology to process the application. Ecology will not process an application until all fees are paid.

(16) The applicant may voluntarily withdraw the application from the board by making such request to the board in written form. The board shall forward a copy of the applicant's request to withdraw the application to the ecology designated regional representative. The application is considered withdrawn from ecology upon the withdrawal of the application from the board. Ecology will remove the application from its line and reject the application.

How can responsibility for processing an application previously filed with ecology be transferred to a board?

(17) If an application has previously been filed with ecology, the applicant may make a request that ecology convey the application to the board with geographic jurisdiction. Such a request must be in written form. A copy of the written request to ecology must be sent to the board at the same time. Ecology will comply with the request by providing all related file documents to the appropriate board. The original application will continue to be on file and maintained at ecology but will not be considered as part of ecology's active workload while the application is being processed by the board.

(18) The board shall notify ecology if it accepts the application for processing. Upon acceptance for processing by the board, the application will retain its place in line at ecology and be considered dual-filed with both the board and ecology. Ecology will remove the application from its active workload. The board will assign an application number in accordance with subsection (11) of this section and inform the ecology designated regional representative in writing of

the board's application number within five business days of accepting the application.

(19) If an application previously filed directly with ecology is accepted for processing by a board, the board shall ensure that a public notice of the application consistent with WAC 173-153-080 is made, regardless of whether the application was previously subject to public notice by ecology.

Can a board decide not to accept an application for processing, or decide to discontinue processing an application?

(20) By a majority vote of a quorum of a board, a board may decline to process or may discontinue processing an application at any time. The board must inform the applicant of its decision in writing within fourteen business days of making the decision. The board must, at the same time, send the ecology regional office a copy of the board's written notice to the applicant. If the basis of the board's decision to decline processing the application is not sufficiently clear from the written notice, and the applicant filed a written request that ecology process the application, ecology may request a further written explanation regarding the board's decision not to process or finish processing the application. The board must provide this additional written explanation within thirty days of ecology's request.

(21) If a board declines to process or discontinues processing an application, it must return the application to the applicant and must inform the applicant that the application may be filed with ecology and advise the applicant of the appropriate ecology office where the application should be filed.

Who must receive copies of applications being processed by a board?

(22) Boards must ensure that copies of applications accepted by them for processing are provided to interested parties in compliance with existing laws. To assist the boards in this, ecology will provide a list of parties which have identified themselves to ecology as interested in the geographic area of the board. Additional interested parties, including Indian tribes, may request copies of applications from boards.

(23) A notice of each application accepted by a board shall be provided to any Indian tribe that has reservation lands or trust lands contiguous with or encompassed within the geographic area of the board's jurisdiction.

[Statutory Authority: RCW 90.80.040. WSR 06-18-102 (Order 05-18), § 173-153-070, filed 9/6/06, effective 10/7/06; WSR 03-01-039 (Order 01-13), § 173-153-070, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-070, filed 11/17/99, effective 12/18/99.]

WAC 173-153-080 What public notice is given on a water right transfer application before a board? (1) Upon acceptance by a board of a water right transfer application in accordance with this chapter, the board shall publish a public notice of the proposed water right transfer in accordance with RCW 90.03.280. This notice must be published at least once a week for two consecutive weeks in the legal notice section of a newspaper of general circulation in the project area of the county or counties where the application proposes to use, divert, withdraw and/or store water. Ecology must provide the board with a list of newspapers generally acceptable for the publication of public notices. The board should consider

publishing an additional public notice in other areas that could be affected by the transfer proposal. The public notice of each individual application for transfer must include the following information:

- (a) The applicant's name and city or county of residence;
- (b) The board's assigned water right change application number;
- (c) The water right priority date;
- (d) A description of the water right to be transferred, including the number of any water right document, that embodies the water right such as a permit, certificate or claim filed under chapter 90.14 RCW, the location of the point of diversion or withdrawal; the place of use; the purpose(s) of use; the period of use; if for irrigation purposes, the total acres irrigated; and the instantaneous rate and annual quantities as stated on the water right document;
- (e) A description of the proposed transfer(s) to be made, including, when applicable, the proposed location of point(s) of diversion or withdrawal; the proposed place(s) of use; the proposed purpose(s) of use; if for irrigation purposes, the total number of acres to be irrigated; and the instantaneous rate and annual quantities of water associated with the proposed water right transfer including the description of a transfer that includes only a portion of a water right;

(f) The manner and time limit for filing protests with ecology under RCW 90.03.470 and WAC 508-12-170; and

(g) The manner for providing written and oral comments or other information to the board, including the board's mailing address and the place, date, and time of any public meeting or hearing scheduled to consider, discuss, or decide the application.

(2) The board may require the applicant to review and confirm the information in the public notice prior to publication. If the board does so, the applicant assumes responsibility for any errors contained in the description of the application published in the public notice.

How does the board verify that proper public notice of the application was made?

(3) The board must send a copy of the public notice to the ecology designated regional representative at the same time the public notice is submitted for publication.

(4) Before issuing a decision on an application, the board must first receive a notarized affidavit of publication from each newspaper in which the public notice regarding the application was published, and the board must verify that publication occurred correctly. The board must also allow at least thirty days following the last date of publication of the notice, to allow for protests or objections to be filed with ecology before the board issues a record of decision.

How are errors or omissions in the public notice corrected? When does a public notice need to be republished?

(5) The public notice must be republished in all newspapers of original publication when an applicant substantively amends an application for a transfer of a water right subsequent to publication of the notice, or when the publication contains a substantive error or omission occurs in the publication. All parties who were sent the original application as required by WAC 173-153-070(22) and/or the original public notice must be sent corrected copies of any amended transfer application and/or an amended public notice. For the pur-

poses of this subsection, the term "substantive error or omission" for publication purposes, refers to any item identified in subsection (1) of this section that is omitted from or inadequately characterized in the public notice. An application is considered substantively amended if it expands the intent of the original proposal or results in a substantial change, such as an alteration to the proposed point of diversion or withdrawal, proposed purpose(s) of use, or to the proposed place of use.

[Statutory Authority: RCW 90.80.040. WSR 06-18-102 (Order 05-18), § 173-153-080, filed 9/6/06, effective 10/7/06; WSR 03-01-039 (Order 01-13), § 173-153-080, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-080, filed 11/17/99, effective 12/18/99.]

WAC 173-153-090 How can protests and letters of concern or support on a water right transfer application be submitted to a board?

Where is a protest submitted regarding a water right transfer application before a board?

(1) A protest against granting a proposed water right change or transfer, as identified in RCW 90.03.470(12), must be received by ecology, with the statutory protest fee, within thirty days of the last date of publication of the public notice.

(2) Ecology shall provide a copy of the protest to the appropriate board within five days of receipt of the protest.

(3) In accordance with WAC 508-12-170 and 508-12-220, a board will thoroughly investigate all pertinent protests of a transfer application before the board.

(4) Ecology shall consider all pertinent protests during its review of the board's record of decision on the application.

(5) Persons inquiring of the board or ecology regarding protest procedures shall be directed to file the protest with ecology.

(6) A board must immediately forward to ecology any protests it receives including the statutory protest fee.

What is included in a valid protest?

(7) A protest must include:

(a) The name, address and phone number (if any) of the protesting party;

(b) Clear identification of the transfer application being protested; and

(c) A statement identifying the basis for the protest.

(d) The statutory protest fee.

What is the difference between a protest and a letter of concern or support?

(8) Any protest received more than thirty days after the last date of publication of the public notice, or without the required fee, will be filed as a letter of concern.

(9) A letter of support is any comment addressing the benefit of the project proposed in an application.

(10) A party who provides a letter of concern or support regarding an application to a water conservancy board is not considered to be a protesting party unless the party has also filed a valid protest with ecology in compliance with this section.

Will a protest or letter of concern be considered?

(11) Boards must accept and consider any oral or written comments or protests in evaluating an application, in accordance with chapter 90.80 RCW, this chapter, and board bylaws.

[Statutory Authority: RCW 90.80.040. WSR 06-18-102 (Order 05-18), § 173-153-090, filed 9/6/06, effective 10/7/06; WSR 03-01-039 (Order 01-13), § 173-153-090, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-090, filed 11/17/99, effective 12/18/99.]

WAC 173-153-100 How does a water conservancy board operate? (1) Water conservancy board meetings must be in compliance with the Open Public Meetings Act, chapter 42.30 RCW. Additionally, minutes of the meetings must be recorded pursuant to chapter 42.32 RCW and such minutes must be made available for public review upon request.

(2) At the beginning of any meeting or hearing in which any application to change or transfer a water right is to be discussed, or upon which a decision is to be made, those individuals in attendance must be informed that any known allegations of conflict of interest must be expressed in that meeting or hearing or their right to do so may be forfeited in accordance with RCW 90.80.120 (2)(a).

(3) A board may adopt and amend its own bylaws through which board meetings, operations, and processes are governed.

How can a board be contacted by the public?

(4) Each board must designate at least one primary contact person for communicating with ecology and other entities. The board must inform the water conservancy board coordinator of:

(a) The name of the primary contact;

(b) How to contact that person; and

(c) Any changes to the contact information for the primary contact of the board.

(5) Boards are subject to the Public Records Act, chapter 42.17 RCW and as described in RCW 90.80.135.

[Statutory Authority: RCW 90.80.040. WSR 03-01-039 (Order 01-13), § 173-153-100, filed 12/9/02, effective 1/9/03.]

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 informa-

tion 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 protesters 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.]

WAC 173-153-120 What assistance is available to water conservancy boards? (1) The director, or his or her designee, shall assign a representative of ecology to be available to provide technical assistance to each board as provided in RCW 90.80.055 (1)(d).

(2) Upon request by a board, an ecology representative will provide technical assistance as the board:

(a) Reviews applications for formal acceptance;

(b) Prepares draft records of decision and reports of examination;

(c) Considers technical factors; and

(d) Considers legal factors affecting the board's development of a record of decision.

(3) A board may request and accept additional technical assistance from ecology.

(4) A board may also request and accept assistance and support from the government or governments of the county or counties in which it operates, as well as from other interested parties.

(5) Ecology recognizes that boards are independent entities with the legal right to make records of decision on water right transfer applications without seeking assistance from ecology. However, should a board desire assistance from ecology in processing an application or regarding its administrative functions, ecology will provide technical assistance upon request of the board. This technical assistance may address issues involved in application processing, including procedural requirements and administrative functions, and can include specific information regarding approaches to resolving particular issues. However, in deference to the independent status of boards, such technical assistance shall be solely in the form of guidance and shall not dictate or otherwise direct any board to reach a specific conclusion regarding any aspect of application processing or of a board's administrative functions.

(6) Technical assistance and training provided to a board is not subject to the Open Public Meetings Act.

[Statutory Authority: RCW 90.80.040. WSR 03-01-039 (Order 01-13), § 173-153-120, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-120, filed 11/17/99, effective 12/18/99.]

WAC 173-153-130 How are records of decision and reports of examination made by a water conservancy board? (1) Records of decision and reports of examination are adopted by a majority vote of a board, pursuant to RCW 90.80.070(4). A board's record of decision and report of examination must be in writing, and the record of decision and report of examination become part of the public record.

(2) When a board proposes to deny an application, in whole or in part, the board must issue to both the applicant and ecology a record of decision and report of examination denying the transfer, or a portion of the transfer, subject to review and final determination by ecology.

(3) When a board proposes to approve an application, the board must issue to both the applicant and ecology a record of decision and a report of examination approving the transfer, subject to review and final approval by ecology.

What is included in a record of decision?

(4) The record of decision must be prepared on a form provided by ecology and identified as the Record of Decision, form number 040-105, and must include the conclusion of the board as to whether the application is denied or approved and a record of the individual vote or abstention of each participating commissioner or that a commissioner has refused him or herself.

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.

(6) The report of examination will consist of a form provided by ecology and identified as Water Conservancy Board Report of Examination, form number 040-106, documenting and summarizing the basic facts associated with the decision. This shall include:

(a) Within a section entitled "background":

(i) A description of the water right proposed for transfer, including the board-assigned water right change application number, and the board's tentative determination as to the validity and quantification of the right, as well as the historical water use information that was considered by the board;

(ii) An explanation of how the board complied with the State Environmental Policy Act; and

(iii) A description of any previous change decisions associated with the water right.

(b) Within a section entitled "comments and protests": A description of any protests, and written or oral comments, including:

(i) The names and addresses of the protestors or commenters;

(ii) A description of the issues raised; and

(iii) The board's analysis regarding each issue raised.

(c) Within a section entitled "investigation":

(i) A description of the project proposed by the applicant, including any issues related to development, such as the applicant's proposed development schedule and an analysis of the effect of the proposed transfer on other water rights, pending applications for changes or transfers, and instream flows established under state law;

(ii) A narrative description of any other water rights or other water uses associated with both the current and proposed place of use and an explanation of how those other rights or uses will be exercised in conjunction with the right proposed to be transferred;

(iii) If the proposed transfer is authorized under RCW 90.44.100, an analysis of the transfer as to whether it is detri-

mental to the public interest, including impacts on any watershed planning activity. Public interest shall not be considered if the proposed transfer is authorized pursuant to RCW 90.03.380 exclusively;

(iv) Any information indicating that an existing water right or portion of a water right has been relinquished or abandoned due to nonuse and the basis for the determination;

(v) A description of the results of any geologic, hydrogeologic, or other scientific investigations that were considered by the board and how this information contributed to the board's conclusions;

(d) Within a section entitled "conclusions": A list of conclusions that the board drew from the information compiled regarding the transfer proposal. Conclusions must, at a minimum, describe:

(i) Whether, and to what extent, a valid water right exists;

(ii) Any relinquishment or abandonment of the water right associated with the water right transfer application as discussed in subsection (6)(d)(i) of this section;

(iii) The result, as adopted by the board, of any hydraulic analysis done related to the proposed water right transfer;

(iv) The board's conclusions of issues raised by any comments and protests received;

(v) Whether the transfer proposal will impair existing rights of others; and

(vi) If the proposed transfer is authorized pursuant to RCW 90.44.100, whether it is detrimental to the public interest. Public interest shall not be considered if the proposed transfer is authorized pursuant to RCW 90.03.380 exclusively;

(e) Within a section entitled "decision": A complete description of the board's decision, fully and comprehensively addressing the entire application proposal;

(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;

(ii) Any requirement to mitigate adverse effects of the project. Mitigation may be proposed by the applicant or the board and be required in the board's decision; and

(iii) A schedule for development and completion of the water right transfer, if approved in part or in whole, that includes a definite date for completion of the transfer and application of the water to an authorized beneficial use.

(7) 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.

[Statutory Authority: RCW 90.80.040. WSR 06-18-102 (Order 05-18), § 173-153-130, filed 9/6/06, effective 10/7/06; WSR 03-01-039 (Order 01-13), § 173-153-130, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-130, filed 11/17/99, effective 12/18/99.]

WAC 173-153-140 What is the process for notifying parties of a record of decision and report of examination?

Who is notified of a board's record of decision and report of examination?

(1) Ecology shall identify to all boards the ecology designated regional representative for receipt of each board's records of decision. Boards shall hand deliver or send by mail records of decision and reports of examination to:

- (a) The applicant;
- (b) The ecology regional office;
- (c) Any person who protested the transfer;
- (d) Any person who requested notice of the board's record of decision;

(e) Any tribe with reservation or trust lands contiguous with or wholly or partly within the area of jurisdiction of the board; and

(f) Any commenting agency or tribe.

How is the record of decision and report of examination transmitted?

(2) Within fifteen business days of a board's decision, the board shall simultaneously mail a copy of the record of decision and the report of examination to all parties identified in subsection (1) of this section. A paper copy of the following shall simultaneously be mailed or delivered to the ecology designated regional representative:

- (a) The record of decision;
- (b) The report of examination;
- (c) The application;
- (d) Public notices; and
- (e) Attachments to the application.

The board shall state to the parties receiving the record of decision and report of examination that it has been simultaneously sent to ecology. Whenever boards have the capacity to do so, they must transmit a signed electronic copy of the record of decision and report of examination to the ecology regional office on the same day that copies of the decision are mailed or hand-delivered.

(3) As stated in WAC 173-153-130, boards must fully document their process of arriving at a record of decision regarding water right transfer applications. Once the board has concluded its work on a water right transfer application, the board must submit to ecology, within fourteen days after the completion of ecology's review period, any remaining original documents not previously submitted to ecology in accordance with subsection (2) of this section, and any documents received or developed by the board related to its deliberations regarding the application upon which it has made a decision. All documents submitted shall be clearly marked with the board-assigned water right change application number on the water right transfer application pursuant to WAC 173-153-070(7). As noted, the original versions of these documents must be provided to ecology; copies are not acceptable for submission. These documents must be sent to the ecology regional office designated by ecology. The board may retain a copy of all of the above-mentioned documents. After the board completes its business on a water right trans-

fer application, and upon submission to ecology of all records related to the application file, ecology shall be responsible for public records requests related to that file.

(4) Any comments received by a board regarding its record of decision within thirty days after ecology's final decision must be forwarded to ecology within five business days of the board's receipt of such comments by the board. For the purposes of this subsection, the term "receipt" refers to the act of a board commissioner or designated administrative support person for the board picking up the board's mail. These comments must be submitted by the board to the ecology regional office.

[Statutory Authority: RCW 90.80.040. WSR 06-18-102 (Order 05-18), § 173-153-140, filed 9/6/06, effective 10/7/06; WSR 03-01-039 (Order 01-13), § 173-153-140, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-140, filed 11/17/99, effective 12/18/99.]

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 resubmission 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.]

WAC 173-153-160 When is a board-approved water right transfer that has been affirmed by ecology complete?

Who provides documentation of the transfer when it is completed?

(1) When an affirmed transfer has been completed and the transferred water right has been put to beneficial use, the person authorized to transfer the water right must submit satisfactory evidence to ecology showing the transfer has been completed in accordance with ecology's order authorizing the transfer of the water right. Upon verification of the extent of development as authorized, ecology will issue a change certificate, superseding permit, or a superseding certificate to the water right holder(s) to document that the approved transfer was accomplished. When evaluating the proposed water right transfer application, the board will consider and address in the report of examination any issues pertaining to completion

of the development or the application of the water to a beneficial use of water as it is proposed to be changed.

Who receives a copy of the document identifying the perfection of the transfer approval?

(2) When a document, as described in subsection (1) of this section, is issued to the applicant, ecology shall provide a copy to the appropriate board for its records, if requested by the board. The document shall also be recorded, at the applicant's expense, by the county or counties in which the water is authorized for use.

What happens if the approved transfer is not completed within the development schedule or if the change authorization is canceled?

(3) If development of the approved transfer is not completed in accordance with the development schedule that accompanies the approval, extensions may be requested in accordance with RCW 90.03.320, and will be evaluated by ecology.

(4) If the person authorized to transfer a water right fails to accomplish the transfer in accordance with the authorization, or any subsequent extensions granted by ecology, and does not receive an extension from ecology, or fails to comply with the requirements of the transfer authorization, ecology will cancel the transfer authorization. Upon cancellation of the transfer authorization, ecology will evaluate the water right to make a tentative determination as to the present validity of the water right and the conditions under which the water right can legally be exercised.

[Statutory Authority: RCW 90.80.040. WSR 03-01-039 (Order 01-13), § 173-153-160, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-160, filed 11/17/99, effective 12/18/99.]

WAC 173-153-170 What are a board's reporting requirements? Boards are required to submit reports to ecology on their activities at the end of October of each year. The reports must be submitted to the water conservancy board coordinator on a form provided by ecology each year and must include information about board activities during the previous twelve months. The reports shall contain the following information:

Water right transfer application data:

(1) Information about applications to the board, to include:

(a) The number of applications filed with the board, identified by water resources inventory area (WRIA);

(b) The number of records of decision withdrawn from ecology by the board;

(c) The number of records of decision approving or partially approving an application;

(d) The number of records of decision denying an application;

(e) The number of records of decision remanded back to the board from ecology;

(f) The number of applications received by the board, distinguishing between requests to transfer surface water and groundwater;

(g) The number of applications to transfer a water right documented by a claim;

(h) The number of applications to transfer a water right documented by a certificate;

(i) The number of applications proposing transfer related to trust water;

(j) The number of applications filed directly with the board, and the number transferred from ecology to the board; and

(k) The number of hearings held within other counties other than the county or counties which established the board, when water rights were proposed to be transferred from one county to another.

Operational information about the boards:

(2) Information about the operations of the board, to include:

(a) The chair of the board;

(b) The primary contact of the board;

(c) The board address, phone, and/or email;

(d) The board commissioners' names and their terms of office;

(e) The regular meeting location, if any;

(f) The regular meeting schedule, if any;

(g) Any changes in membership of the board, including background and contact information for any new commissioners;

(h) Current fees and changes to previously set fees;

(i) Training received other than from ecology;

(j) Ownership of property by the board;

(k) Water marketing activities;

(l) Number of staff employed by the board, and number of staff that provide volunteer service to the board; and

(m) Any litigation in which the board is involved.

[Statutory Authority: RCW 90.80.040. WSR 03-01-039 (Order 01-13), § 173-153-170, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-170, filed 11/17/99, effective 12/18/99.]

WAC 173-153-180 What actions may be appealed under this chapter? Any person aggrieved by ecology's decision to approve or disapprove the establishment or restructuring of a board, or by an ecology order to affirm, reverse modify, or remand a record of decision made by a board, may appeal the decision or order to the state pollution control hearings board in accordance with chapter 43.21B RCW.

[Statutory Authority: RCW 90.80.040. WSR 03-01-039 (Order 01-13), § 173-153-180, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-180, filed 11/17/99, effective 12/18/99.]

WAC 173-153-190 Existing rights are not affected. Nothing in this chapter is intended to impair any existing water rights.

[Statutory Authority: RCW 90.80.040. WSR 03-01-039 (Order 01-13), § 173-153-190, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-190, filed 11/17/99, effective 12/18/99.]

WAC 173-153-200 Will ecology review this chapter in the future to determine if changes are necessary? This chapter may be reviewed by ecology whenever new information, changing conditions, or statutory modifications make it prudent to consider revisions. In carrying out such a review, ecology shall consult with existing boards.

[Statutory Authority: RCW 90.80.040. WSR 03-01-039 (Order 01-13), § 173-153-200, filed 12/9/02, effective 1/9/03. Statutory Authority: Chapter 90.80 RCW. WSR 99-23-101 (Order 98-11), § 173-153-200, filed 11/17/99, effective 12/18/99.]