

Alternatives for water right application processing

Standard water right application processing

Historically, Ecology and its predecessor agencies processed water right applications using the original water laws passed in 1917 and 1945, with minor amendments over the years. Washington followed the standard Western water law policy of “first in time shall be the first in right.” While that policy hasn’t changed, the standard application processing is no longer the only option to get a water right application processed. The standard process was and is still fairly simple.

- Purpose:** Any water right applications
- Application type:** New and change or transfer applications
- Where to apply:** Ecology’s regional office
- Prioritization:** Applications are processed in the order received by the region or Office of Columbia River depending on the source of water requested.
- Estimated processing time:** Can be lengthy depending on backlog, resources and basin needs.
- Processing body:** Ecology’s regional office or Office of Columbia River
- Appealable action:** Ecology’s administrative order
- Qualifications:** None. However, it is the only option for applications that do not qualify under the other processing lines described in this document.

WHY IT MATTERS

Prior to 1997 there was only one line for water right applications through the Department of Ecology (Ecology). All new and change applications were processed in the order received within each basin. With the ebb and flow of the economy, resources for processing the applications varied, sometimes creating a backlog of applications.

The application backlog is not new to Water Resources. A 1924 legislative report documents a backlog of 574 pending out of 1232 applications filed since 1917.

Beginning in 1997, the legislature enacted laws aimed at reducing the backlog. In addition, a Supreme Court case (Hillis v. Ecology) confirmed Ecology’s ability to prioritize some applications through rule making. In 2001, the legislature amended the Water Code, Chapter 90.03 RCW to make “two separate lines” for new and change applications. However, most new laws allow applicants to choose a new “line” for faster service. This document explains those options.

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Priority and expedited application processing line options

- “Water Rights,” Chapter 173-152 WAC (*Hillis Rule*)
- “Water Conservancy Boards,” Chapter 90.80 RCW
- “Cost reimbursement,” RCW 90.03.265
- “Coordinated cost reimbursement,” RCW 90.03.265
- “Expedited application processing,” RCW 90.03.655
- “Storage proposals,” RCW 90.03.370(1)(b)
- “Consolidation of permit exempt withdrawals,” RCW 90.44.105
- “Interties,” RCW 90.03.383
- “Upper Kittitas Groundwater Rule,” WAC 173-539A-060

Each option for expediting a water right application is discussed below and provides a *summary* of each process. This document does not guarantee an application qualifies for a particular line. Ecology recommends the applicant review the law or regulation for complete information or contact the local regional office to discuss the line that may best address your proposal.

“Water Rights” – Chapter 173-152 WAC (*Hillis Rule*)

Purpose: Prioritization over other filed applications

Application type: New or change applications depending on the section in WAC 173-152-050

Where to apply: Ecology’s regional office

Prioritization: Applications under this section are prioritized above all competing applications within the same water source.

Estimated processing time: Generally within a year depending on complexity.

Processing body: Ecology regional office, water conservancy board, cost reimbursement consultant.

Appealable action: Ecology’s administrative order

Qualifications:

1. Public health and safety emergency exists for a public water system or other emergency for which immediate action is necessary for preservation of public health or safety. Ecology must receive written confirmation from the Department of Health that an emergency exists.

2. The following applications can be prioritized after those identified in #1 above.
 - a. A public water system or source that may fail within five years. Ecology may correct the potential cause of the emergency prior to actual system failure.
 - b. A court requires a prompt decision for a claimant participating in an adjudication.
 - c. A proposed water use that is nonconsumptive and would substantially enhance or protect the quality of the natural environment.
 - d. A change or transfer that would result in providing for public water supplies to meet general public needs, such as consolidation of two or more public water systems.
 - e. Seasonal water right change effective for a term of one year or less.
 - f. Temporary water use for an identified period.
 - g. Water budget neutral project.

3. New applications for diversionary rights into reservoirs that is funded or supported through Chapter 90.90 RCW and does not conflict with fisheries objectives.

“Water Conservancy Boards” – Chapter 90.80 RCW and Chapter 173-153 WAC

Purpose: Expedite processing applications

Application type: Change applications to an existing right only

Where to apply:

- A board with jurisdiction. For a list of existing boards visit the web site: www.ecy.wa.gov/programs/wr/conservancy_boards/pdf/pcf.pdf
- Request that an existing application filed with Ecology be conveyed to a board with jurisdiction for processing.

Prioritization: Each board processes applications in the order received. The board may prioritize applications under Chapter 173-152 WAC.

Estimated processing time: About 6 months to 1 year depending on complexity and applicant cooperation

Processing body: The water conservancy board

Appealable action: Ecology’s administrative order based on the board’s report of examination

Qualifications:

1. You apply with a board that has jurisdiction within the county where the water right is currently diverted, withdrawn, or used, or proposed to be diverted, withdrawn, or used.
2. You agree to pay the fees charged by the board.

3. You agree to work directly with the board through its administrative process.
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“Cost reimbursement” – RCW 90.03.265

Purpose: Expedite processing applications

Application type: New or change applications

Where to apply: Ecology regional office

Prioritization: Based on

- Ecology’s available resources.
- Prioritized within the framework of other water right processing needs.

Estimated processing time: Depends on the number and complexity of applications to be processed.

Processing body: Water rights consultant listed on the agency list of qualified persons

Appealable action: Ecology’s administrative order based on the consultant’s report

Qualifications:

You are willing to pay for a pre-qualified consultant to process your application with other senior applications that are identified to be processed from the same source of water.

“Coordinated cost reimbursement” – RCW 90.03.265

Purpose: Expedite processing applications

Application type: New or change applications

Where to apply: Ecology’s regional office

Prioritization: Based on

- Ecology’s available resources.
- Prioritized within the framework of other water right processing needs.

Estimated processing time: Depends on the number and complexity of applications to be processed.

Processing body: Water rights consultant listed on the agency list of qualified persons

Appealable action: Ecology’s administrative order based on the consultant’s report.

Qualifications:

1. Your willingness to participate in a coordinated cost-reimbursement process as described in RCW 90.03.265(3).
 2. Your ability to share in the prorated cost of the full cost for processing all the applications for those who elect to participate within the water source. Processing fees will be calculated based on the proportionate quantity of water requested by each applicant.
 3. A potential for fee adjustment may occur depending on the time and effort to process the application due to complexity.
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“Expedited application processing” – RCW 90.03.655

Purpose: Expedite processing applications

Application type: New or change applications

Where to apply: Ecology’s regional office

Prioritization:

- Ecology may decide to initiate based on interest from a sufficient number of applicants within the same source of water.
- Upon receipt of written requests from at least ten percent of the applicants within the same source of water.

Estimated

processing time: Estimated at the time of initiation of expedited processing

Processing body: Ecology’s regional office

Appealable action: Ecology’s administrative order

Qualifications:

1. You must be willing to participate in expedited processing within the water source.
 2. You must be willing to pay the statutory application fee plus a prorated cost of the full fee for processing all the applications for those who elect to participate within the water source.
 - a. Processing fees will be calculated based on the proportionate quantity of water requested by each applicant.
 - b. A potential for fee adjustment may occur depending on the time and effort to process the application due to complexity.
 - c. Fees will be collected by Ecology prior to the expedited process.
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3. Respond in writing within 60 days as to willingness to participate.
4. Must provide payment within 60 days of the written request to participate.
5. Delayed entry into the expedited process may occur only as allowed by RCW 90.03.655(5).

“Storage Proposals” - RCW 90.03.370(1)(b)

Purpose: Expedite processing applications

Application type: Change or transfer applications or application for secondary permit

Where to apply: Ecology’s regional office

Prioritization: Based on the type of storage proposal

Estimated processing time: Estimated at the time of initiation of expedited processing

Processing body: Ecology’s regional office

Appealable action: Ecology’s administrative order

Qualifications:

1. Your project includes development of a storage facility that will not require a new water right of the water to be stored.
2. You are adding or changing one or more purposes of use of stored water.
3. You are adding to the storage capacity of an existing storage facility.
4. You are applying for a secondary permit to secure use from existing storage facility.

“Consolidation of permit exempt wells” - RCW 90.44.105

Purpose: Prioritization

Application type: Groundwater change applications

Where to apply: Ecology’s regional office

Prioritization: Within other priority processing activities

Estimated processing time: Decision within 60 days of which ever is later:

- The end of the comment period following publication of the applicant’s notice or

- The date on which compliance with the State Environmental Policy Act is completed, whichever is later.

The applicant and Ecology may extend the time for making a decision through prior agreement.

Processing body: Ecology's regional office

Appealable action: Ecology's administrative order

Qualifications:

1. You must currently hold a valid water right to withdraw groundwater through a certificate or permit.
2. The water right permit or certificate you intend to consolidate taps the same body of public groundwater as the permit exempt well.
3. Use of the permit exempt well must be discontinued *upon approval* of the consolidation.
4. Legal agreements showing that binding limitations to the title of the land are in place to prohibit construction of another exempt well that would serve the same area previously served by the discontinued well.
5. The discontinued permit exempt well must be decommissioned according to statute.
6. Your proposed consolidation will not result in impairment of other existing rights, including instream flows.

"Interties" - RCW 90.03.383 (Interties are interconnections of public water systems)

Purpose: Prioritization

Application type: Change applications

Where to apply: Ecology's regional office

Prioritization: Decision within 60 days of receiving the application.

Estimated processing time: Sixty days

Processing body: Ecology's regional office

Appealable action: Ecology's administrative order

Qualifications:

1. Your application must be associated with a public water system.
2. You must have confirmation from Department of Health that an intertie is necessary to address emergent public health or safety concerns associated with public water supply.

3. Your public water system's water system plan must be amended.
 4. An application filed with Ecology must change the existing water right to reflect the proposed use of the water as described in the approved water system plan.
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"Upper Kittitas Groundwater Rule" - WAC 173-539A-060

Purpose: Expedited

Application type: New groundwater applications or request for a water budget neutral determination

Where to apply: Ecology's regional office

Prioritization: Within other priority processing activities

Estimated processing time: Estimated at the time of initiation of expedited processing

Processing body: Ecology's regional office

Appealable action: Ecology's administrative order

Qualifications:

1. Your application must identify an existing trust water right or pending application to place a water right in trust.
 - a. The trust water right must have an equal or greater contribution to flow during the irrigation season.
 - b. The trust water right must have a priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.
2. Your proposed use on the new application or request must be for domestic, group domestic, lawn or noncommercial garden, municipal water supply, stock watering, or industrial purposes within the Yakima River Basin.
3. Your proposed use must be consistent with any agreement governing the use of the trust water right.
4. An application filed with Ecology must change the existing water right to reflect the proposed use of the water as described in the approved water system plan.