

ASSESSMENT OF WATER LEASING ACTIVITIES IN WASHINGTON STATE

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The State of Washington faced a record drought situation for the 2001 water year. The opportunity to lease water from current water right holders for the purpose of enhancing instream flows to improve conditions for fish were constrained by the drought. Water leasing activities conducted by the Washington Department of Ecology (WDOE), the Roza Irrigation District, and the U.S. Bureau of Reclamation (USBR) will be discussed here.

Washington Department of Ecology

The Washington Legislature appropriated funds for water leasing and purchase to the WDOE for the 1999-2001 biennium. WDOE also received funds for drought and non-drought related acquisitions in the 2001-2003 budget (See attached appropriation summary). The Legislature also provided criteria for the use of these funds in the appropriation language. The initial work undertaken by the agency with this funding focused on purchase of the Buckley water right on the Walla Walla River in the amount of \$680,000. The WDOE also cooperated with the U.S. Bureau of Reclamation by reimbursing the USBR for the water right portion of a property acquisition on the Yakima River near the City of Yakima.

The WDOE program continued to evolve in 2001. WDOE with the assistance of the Washington Department of Fish and Wildlife developed list of priority streams segments in the water resource inventory areas that would be targeted for water leases or purchases. These stream segments had been identified during the course of the Limiting Factors Analysis process as areas that would provide the greatest opportunity for habitat improvement from additional stream flows. (See attached Target Streams summary)

The drought disrupted the opportunity to implement a comprehensive lease or purchase of water rights program as the WDOE was forced to move to an emergency response program. WDOE had a dedicated pot of money for acquisitions. At the same time as the agency was responding to the drought crisis the Legislature was engaged in an extended session that created a little uncertainty regarding the amount of funds that would ultimately be available for water lease or purchase.

The WDOE did complete a number of water leases during 2001 for both improved instream flows as well as for emergency supplies for agricultural production. (See attached Water Buying/Leasing Tracking Sheet).

The water leasing program was coordinated by headquarters staff and implemented in large part through the Water Resource Program Regional Managers who were responsible for identifying water right holders with diversion rights on priority stream segments. Press releases and communication through watershed groups helped spread the word. Staff time was not available, however, to undertake a concerted outreach program with every landowner so the program relied to a certain degree on word of mouth and existing relationship with landowners who had been involved with ongoing programs. In the central region, a staff person with the Washington Conservation Commission was able to initiate several contacts and direct persons interested in leasing to the Regional Manager.

The target stream prioritization strategy was well defined and there is general agreement regarding where the work needs to be focused. The leases concluded during 2001 were limited due to the late timing of the draught declaration and, to some degree, the uncertainty of legislative actions. Given the availability of funds during the current year, most all leases that became available on priority stream segments were concluded. The number available was small enough that prioritization was not a factor.

Leases accomplished were all of a senior nature and were rights being used for low value crops, primarily hay and grazing.

Prices were negotiated at the region level using the current rates. Rates in central Washington were the highest due to competition from Roza Irrigation District. Roza was in the market to secure water supplies for the high value perennial crops grown in that district. Valuation methods used varied, but generally reflected current cash rent values for cropland in the area.

Water leases negotiated in the WDOE regional offices were forwarded to WDOE's Olympia headquarters for final processing. WDOE had identified two staff persons to handle the lease contracts. A water resources specialist reviewed the water rights aspects of the lease and a budget/contracts specialist prepared the standard contract that was developed specifically for the program. This aspect of the program operated smoothly and leasing water indicated that they had received their paperwork and payments in a timely manner.

WDOE regional offices were responsible for monitoring the operation of the leases. Monitoring consisted primarily of drive bys to assure that lands that were to be fallowed were in fact not being irrigated.

Outreach and communication regarding the WDOE water leasing/purchase program was minimal, consisting primarily of word of mouth, reference in local newspapers and outreach by cooperating agencies such as the Washington Conservation Commission staff. The agency's efforts were focused on addressing the effects of the drought so specific focus on this particular program became a lower priority.

A group of leases was negotiated with the cooperation of the Dungeness Water Users Association (DWUA). WDOE also was involved. The DWUA represents 4 irrigation districts and 3 ditch companies on the Dungeness River in Clallam County. This group had already been engaged with WDOE in activities to improve the flows in the Dungeness River. The DWUA had, through a previous agreement, agreed to curtail diversion to no more than 50% of the flow of the river. A lease agreement was reached to further improve flows during the lowest stream flow period of August 1st through September 15th. The DWUA managed a process where leases were offered to active farmers in the service area for the 8/1 – 9/15 time period that amounted to 50% of the flow allowed during that period. Thirteen leases were concluded. The value of the leases related to the crop that was being produced on the land taken out of further production ranging from \$100 to \$200 per acre. The DWUA facilitated the process that was started in early July.

Roza Irrigation District

Roza Irrigation District is located in the lower Yakima Valley and serves about 60,000 acres of primarily high value perennial crops. Roza is part of the federal Yakima Reclamation Project but holds junior water rights that are subject to prorating during water short years. Early in the water year when it became apparent that water supplies would again be prorated the Roza Board of Directors decided to utilize District reserves in the amount of \$2.1 to lease water in the Yakima drainage to supplement supplies received from the Bureau. Media coverage of the drought was extensive in the central Washington area so the District manager was able to rely on press coverage to get word out on the District's willingness to lease water. Roza was contacted directly by enough water right holders to fully commit the funds they had available.

Irrigation water supplies in the Yakima River basin are under the control of the USBR through their Total Water Supply Available (TWSA) methodology. The allocation of water is further complicated by several federal court orders and the jurisdiction of Judge Stauffacher under the ongoing Aquavella adjudication. A special process was developed by the affected parties for transfers under leases with in the basin, which allowed all the proposed leases to be concluded with 6 weeks.

Roza announced an initial price of \$150 per acre of cropland taken out of production. When this offer didn't produce the volume of water desired, the price was increased to \$250 per acre. All leases were paid at the higher amount including those that came in under the initial price announcement. This price for crop leases translates to a value on the water of about \$110/acre ft.

Water was leased from individuals as well as other irrigation districts. Some water was acquired from high in the tributaries. The value of one small lease on the Teanaway River in the amount of \$8,657 was reimbursed by WDOE. Both WDOE and Roza benefited from that lease since the water stayed in the Teanaway River that was a priority segment for the WDOE.

Once Roza indicated intent to lease water the offers came rather rapidly. This seemed to indicate a greater comfort level in concluding leases with another farming entity as opposed to the WDOE. WDOE also declined to enter into any bidding competition with the District.

U.S. Bureau of Reclamation

The U.S. Bureau of Reclamation (USBR) has utilized water leases on a limited basis under the provisions of the Yakima River Basin Enhancement Project (YRBEP) authority. The USBR has been a part of Yakima River management for nearly 100 years. Congress enacted the YRBEP in 1994 to improve the water supply situation in the Yakima River basin. USBR has been working on the program since that time.

USBR has only leased water as a method to reimburse water users when their water wasn't available due to capital improvement being constructed by the USBR. The USBR has chosen to focus instead on acquisition of land with appurtenant water rights. Their experience is has been that better value is received via permanent acquisition of the water right. They have also found that most land owners are unwilling to sell only the water, since land without water rights in arid areas has little residual value.

USBR has initiated an aggressive program to acquire habitat land adjacent to the Yakima River under this program. They have utilized the services of two part-time staffers with real estate transaction experience who have personally contacted all landowners in the target area, between Selah Gap and Union Gap on the Yakima River. They have let the land owners know of their interest and have concluded several significant purchases through this outreach program.

The USBR subsequently was reimbursed by the WDOE for the water portion of the purchase.

Conclusions

- If specific changes were made to the way leases were advertised, solicited, acquired, held and monitored, water leasing appears to be a very viable short-term approach to resolve water shortage problems and/or economic problems faced by certain farmers. Given that leasing provides farmers with great flexibility, compared to outright acquisitions, leasing also appears to be a very positive long-term approach to address complex water shortage and agricultural problems.
- Water leasing appears to also be a very viable way to develop relationships with water right holders that could lead, when needed, ultimately to voluntary purchases of a portion or all of the water right.
- Water right holders seem to be most comfortable leasing water rights to other farmers or irrigation districts. Regional or locally based leasing structures and organizations should be examined as an additional avenue for soliciting, leasing and holding water rights. Any successful program must partner with local organizations and individuals.
- Some uncertainty exists regarding dealings with the WDOE on water leases. Again, additional regional or locally based structures and organizations should be investigated to solicit, lease and hold water rights.
- The current visual observation approach to monitoring seems appropriate in the short-run given the emergency nature of the program. However, over the long-term a more thorough monitoring program will be needed to assure the public that leased water is left in stream and is not withdrawn by right holders down stream and that the leased water provided desired ecological benefits.
- The current communication and outreach strategy also seems appropriate given the emergency nature of the program. Over the long-term, however, a more thorough communication and outreach program will be needed. Strategies need to be developed to get the word out to all eligible farmers about the program in terms they understand. The information should come from organizations that farmers feel most comfortable with.
- The pricing system may need to be reexamined. There could be an appearance of conflict of interest when the same agency is responsible for determining the extent of your asset and then negotiates a price for the sale. The amount of water that has been put to beneficial use and is subsequently available to transfer is determined by WDOE. This could lead concerns about the

potential to limit that amount to maximize the amount of water received for the price paid. One option to consider would be to contract out for appraisals.

A non-governmental entity could potentially be in a good position to do the outreach and secure leases from targeted water right holders. Non-governmental entities would be in a position to work to maximize the value received by the water right holder. Washington Water Trust is a non-governmental organization that could be looked at for this role. Others exist also.

APPENDIX

Department of Ecology Budgets

SUBSTITUTE SENATE BILL 6155

Chapter 8, Laws of 2001

(partial veto)

57th Legislature
2001 Second Special Session

CAPITAL BUDGET

NEW SECTION. Sec. 304. FOR THE DEPARTMENT OF ECOLOGY
Methow Basin Water Conservation (92-2-009)

The reappropriation in this section is subject to the following conditions and limitations: The reappropriation in this section is provided solely for projects under contract on or before June 30, 2001. Reappropriated funds not associated with contracted projects shall lapse on June 30, 2001.

Reappropriation:

State Building Construction Account--State	\$ 87,689
Prior Biennia (Expenditures)	\$ 0
Future Biennia (Projected Costs)	\$ 0
TOTAL	\$ 87,689

NEW SECTION. Sec. 306. FOR THE DEPARTMENT OF ECOLOGY
Water Rights Purchase/Lease (99-1-005)

The appropriation in this section is provided for the purchase or lease of water rights under the trust water rights program under chapters 90.42 and 90.38 RCW, for the purpose of improving stream and river flows in fish critical basins.

Appropriation:

State Building Construction Account--State	\$ 1,000,000
General Fund--Federal.	\$ 6,000,000
Subtotal Appropriation.	\$ 7,000,000
Prior Biennia (Expenditures)	\$ 1,000,000
Future Biennia (Projected Costs)	\$ 0
TOTAL	\$ 8,000,000

NEW SECTION. Sec. 312. FOR THE DEPARTMENT OF ECOLOGY
 Referendum 38 Water Supply Facilities (74-2-006)

The reappropriation in this section is subject to the following conditions and limitations:

(1) The reappropriation is provided solely for projects under contracts on or before June 30, 2001. Reappropriated funds not associated with contracted projects shall lapse on June 30, 2001.

(2) The office of financial management may grant waivers from this lapse requirement for specific projects upon findings of exceptional circumstances after notification of the chairs of the house of representatives capital budget committee and senate ways and means committee.

(3) The department shall submit a report to the office of financial management and house of representatives capital budget committee and senate ways and means committee by December 1, 2001, listing all projects funded from this section.

(4) \$2,500,000 of the reappropriation from the state drought preparedness account is provided solely to purchase or lease water pursuant to section 306 of this act.

Reappropriation:

State Drought Preparedness--State.	\$ 5,525,000
State and Local Improvements Revolving Account (Water Supply Facilities)--State. .	\$ 6,000,000
Subtotal Reappropriation.	\$11,525,000
Prior Biennia (Expenditures)	\$ 6,029,098
Future Biennia (Projected Costs)	\$ 0
TOTAL	\$ 17,554,098

NEW SECTION. Sec. 313. FOR THE DEPARTMENT OF ECOLOGY
 Referendum 38 Water Supply Facilities (02-4-006)

The appropriation in this section is subject to the following conditions and limitations:
 \$250,000 of the appropriation is provided solely to study the development of the Lake Wenatchee water storage project.

Appropriation:

State and Local Improvements Revolving Account (Water Supply Facilities)-- State	\$ 6,000,000
Prior Biennia (Expenditures)	\$ 0
Future Biennia (Projected Costs)	\$12,000,000
TOTAL	\$18,000,000

NEW SECTION. Sec. 316. FOR THE DEPARTMENT OF ECOLOGY
 Water Irrigation Efficiencies (01-H-010)

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation is provided solely to provide grants to conservation districts to assist the agricultural community to implement water conservation measures and irrigation efficiencies in the 16 critical basins. A conservation district receiving funds shall manage each grant to ensure that a portion of the water saved by the water conservation measure or irrigation efficiency will

be placed as a purchase or a lease in the trust water rights program to enhance instream flows. The proportion of saved water placed in the trust water rights program must be equal to the percentage of the public investment in the conservation measure or irrigation efficiency. The percentage of the public investment may not exceed 85 percent of the total cost of the conservation measure or irrigation efficiency. In awarding grants, a conservation district shall give first priority to family farms.

(2) By February 1, 2003, the state conservation commission shall submit a progress report to the appropriate standing committees of the legislature on: (1) The amount of public funds expended from this section; and (2) the location and amount of water placed in the trust water rights program pursuant to this section.

(3) \$1,000,000 of the water quality account appropriation is provided for water leases or projects in the Yakima River basin for aquifer recharge necessary to allow the use of drought wells to meet essential irrigation needs. Essential irrigation needs is defined as eighty percent of the amount of water a farmer would ordinarily receive from the irrigation district, less the water that is actually delivered and regardless of crops grown.

Appropriation:

State and Local Improvements Revolving Account	
(Water Supply Facilities)--State.	\$ 4,000,000
Water Quality Account--State	\$ 5,000,000
Subtotal Appropriation.	\$ 9,000,000
Prior Biennia (Expenditures)	\$ 0
Future Biennia (Projected Costs)	\$ 0
TOTAL	\$ 9,000,000

NEW SECTION. Sec. 317. FOR THE DEPARTMENT OF ECOLOGY

Water Measuring Devices and Gauges (01-H-009)

The appropriation in this section is subject to the following conditions and limitations: The appropriation in this section is provided solely for water measuring devices and gauges. The department shall prioritize the distribution of water measuring devices and gauges to locations participating in the department of fish and wildlife fish screens and cooperative compliance programs.

Appropriation:

State Building Construction Account--State	\$ 3,400,000
Prior Biennia (Expenditures)	\$ 0
Future Biennia (Projected Costs)	\$ 0
TOTAL	\$ 3,400,000

ENGROSSED SUBSTITUTE SENATE BILL 6153

Chapter 7, Laws of 2001

(partial veto)

57th Legislature

2001 Second Special Session

FISCAL MATTERS

NEW SECTION. Sec. 302. FOR THE DEPARTMENT OF ECOLOGY

General Fund--State Appropriation (FY 2002). . . .	\$	46,633,000
General Fund--State Appropriation (FY 2003). . . .	\$	44,481,000
General Fund--Federal Appropriation.	\$	56,805,000
General Fund--Private/Local Appropriation. . . .	\$	4,351,000
Reclamation Revolving Account--State		
Appropriation.	\$	1,810,000
State Emergency Water Projects Revolving Account--		
State Appropriation.	\$	878,000
State Drought Preparedness Account--State		
Appropriation.	\$	5,325,000
State and Local Improvements Revolving Account		
(Water Supply Facilities)--State		
Appropriation.	\$	587,000
Water Quality Account--State Appropriation	\$	12,481,000
Water Quality Permit Account--State		
Appropriation.	\$	23,827,000
Water Pollution Control Revolving Account--		
State Appropriation.	\$	467,000
Water Pollution Control Revolving Account--		
Federal Appropriation.	\$	2,316,000
TOTAL APPROPRIATION	\$	324,942,000

The appropriations in this section are subject to the following conditions and limitations:

(3) \$250,000 of the general fund--state appropriation for fiscal year 2002, \$250,000 of the general fund--state appropriation for fiscal year 2003, \$564,000 of the state drought preparedness account—state appropriation, and \$549,000 of the water quality account—state appropriation are provided solely for enhanced streamflow monitoring in critical salmon recovery basins. \$640,000 of this amount is provided solely to implement the Puget Sound work plan and agency action item DOE-01.

(5) \$383,000 of the general fund--state appropriation for fiscal year 2002 and \$383,000 of the general fund--state appropriation for fiscal year 2003 are provided solely for water conservation plan review, technical assistance, and project review for water conservation and reuse projects. By December 1, 2003, the department in cooperation with the department of health shall report to the governor and appropriate committees of the legislature on the activities and achievements related to water conservation and reuse during the past two biennia. The report shall include an overview of technical assistance provided, reuse project development activities, and water conservation achievements.

(12) \$1,500,000 of the general fund--state appropriation for fiscal year 2002, \$1,500,000 of the general fund--state appropriation for fiscal year 2003, and \$3,000,000 of the water quality account appropriation are provided solely to implement chapter 237, Laws of 2001 (Engrossed Substitute House Bill No. 1832, water resources management) and to support the processing of applications for changes and transfers of existing water rights.

(13) \$4,500,000 of the general fund--state appropriation for fiscal year 2002 and \$4,500,000 of the general fund--state appropriation for fiscal year 2003 are provided solely for grants to local governments to conduct watershed planning.

(14) \$3,114,000 of the water quality account appropriation is provided solely to implement Engrossed Substitute House Bill No. 1832 (water resources management). Of this amount: (a) \$2,100,000 is provided for grants to local governments for targeted watershed assessments consistent with Engrossed Substitute House Bill No. 1832; and (b) the remainder of the funding is provided solely for development of a state environmental policy act template to streamline environmental review, creation of a blue ribbon panel to develop long- term watershed planning implementation funding options, and technical assistance.

(15) \$50,000 of the general fund--state appropriation for fiscal year 2002 is for a conservation district in the Moses Lake region for a culvert removal project on Rocky Ford creek for the purpose of reducing flooding and improving water quality.

(16) \$150,000 of the general fund--state appropriation for fiscal year 2002 and \$150,000 of the general fund--state appropriation for fiscal year 2003 are for the conservation commission for the Washington grazing lands conservation initiative's establishment of the Washington watershed, science, and technology program to provide technical assistance to private landowners in conducting water quality monitoring, riparian vegetation management, and noxious weed control.

(17) \$75,000 of the general fund--state appropriation for fiscal year 2002 is for a conservation district in the Palouse region for a pilot project to evaluate the ability of existing voluntary and regulatory programs to improve water quality in water quality limited segments listed pursuant to section 303(d) of the federal clean water act.

(18) \$200,000 of the water quality account appropriation is provided solely to provide coordination and assistance to groups established for the purpose of protecting, enhancing, and restoring the biological, chemical, and physical processes of watersheds. These groups may include those involved in coordinated resource management, regional fisheries enhancement groups, conservation districts, watershed councils, and private nonprofit organizations incorporated under Title 24 RCW.

(19) \$325,000 of the state drought preparedness account—state appropriation is provided solely for an environmental impact statement of the Pine Hollow reservoir project to be conducted in conjunction with the local irrigation district.

(21) \$600,000 of the water quality account--state appropriation is provided solely for setting instream flows in six basins not currently planning under the watershed planning act.

*Sec. 302 was partially vetoed. See message at end of chapter.

ENGROSSED SUBSTITUTE SENATE BILL 5180

Chapter 309, Laws of 1999
(partial veto)

56th Legislature
1999 Regular Session
FISCAL MATTERS

NEW SECTION. Sec. 302. FOR THE DEPARTMENT OF ECOLOGY

General Fund--State Appropriation (FY 2000) \$33,558,000

General Fund--State Appropriation (FY 2001)	\$33,539,000
General Fund--Federal Appropriation	\$48,981,000
General Fund--Private/Local Appropriation	\$4,234,000
Special Grass Seed Burning Research Account--	
State Appropriation.	\$ 14,000
Reclamation Revolving Account--State Appropriation.	\$1,735,000
Flood Control Assistance Account--	
State Appropriation.	\$3,989,000
State Emergency Water Projects Revolving Account--	
State Appropriation.	\$ 317,000
Waste Reduction/Recycling/Litter Control Account--	
State Appropriation.	\$13,192,000
Salmon Recovery Account--State Appropriation.	\$1,120,000
State and Local Improvements Revolving Account	
(Water Supply Facilities)--State Appropriation	\$ 557,000
Water Quality Account--State Appropriation.	\$3,879,000
Wood Stove Education and Enforcement Account--	
State Appropriation.	\$ 351,000
Worker and Community Right-to-Know Account--	
State Appropriation.	\$3,155,000
State Toxics Control Account--State Appropriation	\$46,838,000
State Toxics Control Account--Private/Local	
Appropriation.	\$ 377,000
Local Toxics Control Account--State Appropriation	\$4,586,000
Water Quality Permit Account--State Appropriation	\$21,003,000
Underground Storage Tank Account--State	
Appropriation.	\$2,475,000
Environmental Excellence Account--State	
Appropriation.	\$ 20,000
Biosolids Permit Account--State Appropriation	\$ 572,000
Hazardous Waste Assistance Account--State	
Appropriation.	\$3,942,000
Air Pollution Control Account--State Appropriation.	\$15,844,000
Oil Spill Administration Account--State	
Appropriation.	\$7,521,000
Air Operating Permit Account--State Appropriation	\$3,548,000
Freshwater Aquatic Weeds Account--State	
Appropriation.	\$1,430,000
Oil Spill Response Account--State Appropriation	\$7,078,000
Metals Mining Account--State Appropriation.	\$ 43,000
Water Pollution Control Revolving Account--	
State Appropriation.	\$ 439,000
Water Pollution Control Revolving Account--	
Federal Appropriation.	\$2,200,000
TOTAL APPROPRIATION	\$266,537,000

The appropriations in this section are subject to the following conditions and limitations:

(3) \$374,000 of the general fund--state appropriation for fiscal year 2000 and \$283,000 of the general fund--state appropriation for fiscal year 2001 are provided solely for the department to digitize water rights documents and to provide this information to watershed planning groups.

(4) \$500,000 of the general fund--federal appropriation is provided solely for the department to update its water rights tracking system. \$250,000 of this amount may be expended in each fiscal year of the biennium only if the state receives greater than \$25,000,000 from the federal government for salmon recovery activities in that fiscal year. Funds authorized for expenditure in fiscal year 2000 may be expended in fiscal year 2001.

(13) \$438,000 of the general fund--state appropriation for fiscal year 2000, \$1,025,000 of the general fund--state appropriation for fiscal year 2001, and \$1,870,000 of the general fund--federal appropriation are provided solely to implement Substitute Senate Bill No. 5670 (noxious weed herbicide) for the establishment of total maximum daily loads for water bodies across the state. \$433,000 of the general fund--state appropriation is to implement the Puget Sound work plan and agency action item DOE-2. If the bill is not enacted by June 30, 1999, the amounts provided in this subsection shall lapse.

(14) \$591,000 of the general fund--state appropriation for fiscal year 2000 and \$1,131,000 of the general fund--state appropriation for fiscal year 2001 are provided solely to process water rights applications.

(15) \$414,000 of the general fund--state appropriation for fiscal year 2000, \$383,000 of the general fund--state appropriation for fiscal year 2001, and \$797,000 of the general fund--federal appropriation are provided solely for technical assistance and project review for water conservation and reuse projects. \$398,000 of the general fund--federal appropriation may be expended in each fiscal year of the biennium only if the state receives greater than \$25,000,000 from the federal government for salmon recovery activities in that fiscal year. Funds authorized for expenditure in fiscal year 2000 may be expended in fiscal year 2001.

(16) The entire salmon recovery account appropriation is provided to increase compliance with existing water quality and water resources laws.

(17) \$4,500,000 of the general fund--state appropriation for fiscal year 2000, \$4,500,000 of the general fund--state appropriation for fiscal year 2001, and \$1,500,000 of the general fund--federal appropriation are provided solely for grants to local governments to conduct watershed planning. \$750,000 of the general fund--federal amount may be expended in each fiscal year of the biennium only if the state receives greater than \$25,000,000 from the federal government for salmon recovery activities in that fiscal year. Funds authorized for expenditure in fiscal year 2000 may be expended in fiscal year 2001.

(18) \$100,000 of the general fund--state appropriation for fiscal

year 2000, \$82,000 of the general fund--state appropriation for fiscal year 2001, and \$181,000 of the general fund--federal appropriation are provided solely for the department, in cooperation with the department of fish and wildlife, to establish fish and habitat index monitoring sites to measure the effectiveness of salmon recovery activities. \$90,500 of the general fund--federal amount may be expended in each fiscal year of the biennium only if the state receives greater than \$25,000,000 from the federal government for salmon recovery activities in that fiscal year. Funds authorized for expenditure in fiscal year 2000 may be expended in fiscal year 2001.

(23) \$145,000 of the general fund--state fiscal year 2000 appropriation and \$145,000 of the general fund--state fiscal year 2001 appropriation are provided solely for training and technical assistance to support the activities of county water conservancy boards.

SUBSTITUTE HOUSE BILL 1165

Chapter 379, Laws of 1999
(partial veto)

56th Legislature
1999 Regular Session

CAPITAL BUDGET

NEW SECTION. Sec. 301. FOR THE DEPARTMENT OF ECOLOGY Water Rights Purchase

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation is provided for a pilot project for the purchase of water rights under the trust water rights program under chapter 90.42 RCW, for the purpose of improving stream and river flows in fish critical basins. This appropriation shall only be used to acquire water rights in basins with current or proposed listings of salmon or steelhead under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.) and where low flows have been identified as a limiting factor for salmon recovery. Priority for funding such purchases and leases shall take into consideration the following:

- (a) Proposals providing the greatest benefit for restoring and protecting fish;
- (b) Proposals providing benefits in addition to protecting fish critical streams and rivers;
- (c) Proposals that include funds from other sources;
- (d) Proposals showing a broad level of support among interested parties;
- (e) Proposals requiring the lowest administrative costs to implement; and
- (f) Proposals requiring the lowest overall cost within the context of the local marketplace.

(2) On or before December 1, 2000, the department shall report to the governor and appropriate legislative committees on the progress in implementing the pilot program and recommendations for continuation of the program.

Appropriation:

State Building Construction Account--State \$1,000,000

Prior Biennia (Expenditures) \$ 0

Future Biennia (Projected Costs) \$24,000,000

TOTAL \$25,000,000

NEW SECTION. Sec. 303. FOR THE DEPARTMENT OF ECOLOGY

Referendum 38 Water Supply Facilities (74-2-006)

The appropriations in this section are subject to the following conditions and limitations:

(1) The reappropriation in this section is provided solely for projects under contracts on or before June 30, 1999. Reappropriated funds not associated with contracted projects shall lapse on June 30, 1999.

(2) The office of financial management may grant waivers from this lapse requirement for specific projects upon findings of exceptional circumstances after notification of the chairs of the house of representatives capital budget committee and senate ways and means committee.

(3) The department shall submit a report to the office of financial management and the house of representatives capital budget committee and senate ways and means committee by December 1, 1999, listing all projects funded from this section.

Reappropriation:

State and Local Improvements Revolving Account

(Water Supply Facilities)--State. \$6,004,436

Appropriation:

State and Local Improvements Revolving Account

(Water Supply Facilities)--State. \$4,100,000

State Drought Preparedness Account--State. \$6,800,000

Subtotal Appropriation. \$10,900,000

Prior Biennia (Expenditures) \$4,320,950

Future Biennia (Projected Costs) \$ 0

TOTAL \$21,225,386

NEW SECTION. Sec. 304. FOR THE DEPARTMENT OF ECOLOGY

State Emergency Water Projects Revolving Account (76-2-003)

Reappropriation:

State Emergency Water Projects Revolving Account--

State \$ 577,833

Prior Biennia (Expenditures) \$ 0

Future Biennia (Projected Costs) \$ 0

TOTAL\$ 577,833

NEW SECTION. Sec. 309. FOR THE DEPARTMENT OF ECOLOGY
Methow Basin Water Conservation (92-2-009)

Reappropriation:

State Building Construction Account--State\$ 87,689

Prior Biennia (Expenditures)\$ 312,311

Future Biennia (Projected Costs)\$ 0

TOTAL\$ 400,000

**Drought Response Fish Mitigation: Eastern Washington Stream Flow Supplementation -
Initial Regional Funding Priorities ***

March 20, 2001

WRIA 32 - Walla Walla & Touchet R. Tribs (~June through Oct.)

Priority 1 Mill Ck. above Blue Ck. confluence
N. Fk.. Touchet R. above U.S. 12

Priority 2 Coppei Ck. system
Dry Ck. above U.S. 12 at Smith Rd.

Priority 3 Cottonwood Ck.
South Fk.. Touchet R.
South Fk.. Patit Ck.

WRIA 48 - Methow R. Basin (~June through Oct.)

Priority 1 Twisp R., R.M. 0-8
Methow R. & tribs, RM 40.2 -59.7 (Twisp R. up to Weeman Bridge)
Chewuch R.& tribs, RM 0-8

WRIA 37,38,39- Lower, Middle, & Upper Yakima Basins

Priority 1 Teanaway R, ~RM 0-5 (July -mid Oct.)
Toppenish/Simcoe Ck., 6.8 ml. below Lateral Canal (mid June - mid Dec.)
Taneum Ck., RM 0-3.5 (late summer - early fall)
Lower Yakima R., RM 36-47 (July-Sept.)
Naches R., Downstream of Wapatox Dam (mid July - mid Sept.)

Priority 2 Manastash Ck., RM 1.5-3.0 & 3.3-4.9 (late summer - early fail).

Ahtanum Ck., RM 12.0-19.6 @ Wapato diversion (Aug. - mid Oct.)
Wiison/Naneum/Coleman/Cheny Ck., RM 0-9.0 (Summer-early fall)

Priority 3 Swauk Ck., RM 0-5.0 (late summer-early fall)
Big Ck. (upper Yakima trib.), RM 0-2.1 (entire irrigation season)

WRIA 45 - Wenatchee R. Basin (June through October)

Priority 1 Wenatchee R. & tribs. , RM 0-54.2 (Lake Wenatchee outlet)
Chiwawa R. & tribs, RM 0.0-3.6

Priority 2 Peshastin Ck., RM 0.0-4.8

WRIA 35 - Middle Snake Tribs. (Tucannon/Asotin/Alpowa, etc., detail to be add

* Notes:

1. WRIAs were selected to include flow limited basins with an ESA and significant agricultural diversion nexus.
2. Selection and prioritization of projects within a WRIA considered: Number of ESA listed species, relative condition of habitat, importance of the reach for salmonid spawning and rearing, number of diversions and amount of diverted water, size of stream, amount of water needed to improve conditions, and relative benefits expected.
3. Additional areas will be added as regional detail is expanded.

State of Washington Laws and Regulations governing drought response.

RCW 43.83B.400

Drought conditions -- Defined -- Intent.

It is the intent of the legislature to provide emergency powers to the department of ecology to enable it to take actions, in a timely and expeditious manner, that are designed to alleviate hardships and reduce burdens on various water users and uses arising from drought conditions. As used in this chapter, "drought condition" means that the water supply for a geographical area or for a significant portion of a geographical area is below seventy-five percent of normal and the water shortage is likely to create undue hardships for various water uses and users.

RCW 43.83B.405

Drought conditions -- Withdrawals and diversions -- Orders, procedure.

(1) Whenever it appears to the department of ecology that a drought condition either exists or is forecast to occur within the state or portions thereof, the department of ecology is authorized to issue orders, pursuant to rules previously adopted, to implement the powers as set forth in [RCW 43.83B.410](#) through [43.83B.420](#). The department shall, immediately upon the issuance of an order under this section, cause said order to be published in newspapers of general circulation in

the areas of the state to which the order relates. Prior to the issuance of an order, the department shall (a) consult with and obtain the views of the federal and state government entities identified in the drought contingency plan periodically revised by the department pursuant to RCW [43.83B.410](#)(4), and (b) obtain the written approval of the governor. Orders issued under this section shall be deemed orders for the purposes of chapter [34.05](#) RCW.

RCW 43.83B.410

Drought conditions -- Withdrawals and diversions -- Orders, authority granted.

Upon the issuance of an order under RCW [43.83B.405](#), the department of ecology is empowered to:

(1)(a) Authorize emergency withdrawal of public surface and ground waters, including dead storage within reservoirs, on a temporary basis and authorize associated physical works which may be either temporary or permanent. The termination date for the authority to make such an emergency withdrawal may not be later than the termination date of the order issued under RCW [43.83B.405](#) under which the power to authorize the withdrawal is established. The department of ecology may issue such withdrawal authorization when, after investigation and after providing appropriate federal, state, and local governmental bodies an opportunity to comment, the following are found:

(i) The waters proposed for withdrawal are to be used for a beneficial use involving a previously established activity or purpose;

(ii) The previously established activity or purpose was furnished water through rights applicable to the use of a public body of water that cannot be exercised due to the lack of water arising from natural drought conditions; and

(iii) The proposed withdrawal will not reduce flows or levels below essential minimums necessary (A) to assure the maintenance of fisheries requirements, and (B) to protect federal and state interests including, among others, power generation, navigation, and existing water rights;

(b) All withdrawal authorizations issued under this section shall contain provisions that allow for termination of withdrawals, in whole or in part, whenever withdrawals will conflict with flows and levels as provided in (a)(iii) of this subsection. Domestic and irrigation uses of public surface and ground waters shall be given priority in determining "beneficial uses." As to water withdrawal and associated works authorized under this subsection, the requirements of chapter [43.21C](#) RCW and public bidding requirements as otherwise provided by law are waived and inapplicable. All state and local agencies with authority to issue permits or other authorizations for such works shall, to the extent possible, expedite the processing of the permits or authorizations in keeping with the emergency nature of the requests and shall provide a decision to the applicant within fifteen calendar days of the date of application. All state departments or other agencies having jurisdiction over state or other public lands, if such lands are necessary to effectuate the withdrawal authorizations issued under this subsection, shall provide short-term easements or other appropriate property interest upon the payment of the fair market value. This mandate shall not apply to any lands of the state that are reserved for a special purpose or use that cannot properly be carried out if the property interest were conveyed;

(2) Approve a temporary change in purpose, place of use, or point of diversion, consistent with existing state policy allowing transfer or lease of waters between willing parties, as provided for in RCW [90.03.380](#), [90.03.390](#), and [90.44.100](#). However, compliance with any requirements of (a) notice of newspaper publication of these sections or (b) the state environmental policy act, chapter [43.21C](#) RCW, is not required when such changes are necessary to respond to drought conditions as determined by the department of ecology. An approval of a temporary change of a water right as authorized under this subsection is not admissible as evidence in either supporting or contesting the validity of water claims in *State of Washington, Department of Ecology v. Acquavella*, Yakima county superior court number 77-2-01484-5 or any similar proceeding where the existence of a water right is at issue.

(3) Employ additional persons for specified terms of time, consistent with the term of a drought condition, as are necessary to ensure the successful performance of the activities associated with implementing the emergency drought program of this chapter.

(4) Revise the drought contingency plan previously developed by the department; and

(5) Acquire needed emergency drought-related equipment.

[1989 c 171 § 3.]

RCW 43.83B.430

State drought preparedness account.

The state drought preparedness account is created in the state treasury. All receipts from appropriated funds designated for the account and funds transferred from the state emergency water projects revolving account must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for drought preparedness.

[1999 c 379 § 921.]

WAC 173-166-040 General eligibility rule. (1) Applications for emergency drought permits, water transfers, or funding assistance made under this chapter will be processed only for previously established activities in a geographical area or part of a geographical area declared to be suffering from drought conditions. Where required by law, such activities must be conducted under a valid water right permit, certificate, or supported registered water right claim.

(2) Applications will be processed if the water user is receiving, or is projected to receive, less than seventy-five percent of normal water supply for the previously established activity and experiencing undue hardship as a result.

(3) All permits and approvals issued under this chapter will be subject to existing rights.

(4) Water obtained through the issuance of temporary permits, water right transfers, and/or funding assistance for projects or measures must be put to beneficial use in lieu of water which is unavailable because of drought conditions.

(5) All permits and approvals issued under this chapter will be of a temporary nature and will contain an expiration date.

WAC 173-166-050 Forecast of drought conditions. (1) Whenever it appears to the department of ecology that drought conditions as defined in WAC [173-166-030](#)(2) either exist or are forecast to occur, ecology will consult with the state's water supply availability committee or its successor. Other appropriate sources of water supply information, such as the Columbia River water management group and the U.S. Army Corps of Engineers, may be consulted by the WSAC as needed.

(2) Should the water supply availability committee determine that a geographical area or a part of a geographical area is receiving, or is likely to receive, seventy-five percent or less of its normal water supply, it will advise the executive water emergency committee and the Indian tribes within the area of that fact. The executive water emergency committee will then make a determination as to whether or not undue hardships will occur as a result of the shortage.

(3) Should the executive water emergency committee determine that an area will suffer undue hardship as a result of a reduced water supply, it will submit a recommendation to that effect to the governor for written approval. Affected Indian tribes will be notified at the time such a recommendation is submitted.

(4) Upon securing the written approval of the governor, ecology will then issue an order declaring a geographical area or a significant part of a geographical area to be suffering from drought conditions and publish that order in a newspaper of general circulation in the area affected by the order.

(5) The determination of drought conditions will be based upon the updated seasonal forecast as applied to the water supply conditions within the designated geographical area or part of a designated geographical area.

WAC 173-166-060 Orders declaring drought conditions. (1) If the department of ecology determines that a geographical area or part of a geographical area is suffering from drought conditions, it may, upon the advice of the water supply availability committee, with the concurrence of the executive water emergency committee, and the written approval of the governor, issue an order to that effect.

(2) The order declaring drought conditions for a geographical area or part of a geographical area must contain the following elements:

(a) A description of the geographical area or part of a geographical area which is being so designated.

(b) The facts leading to the issuance of the order.

(c) The statutory authority upon which the order is being issued.

(d) The commencement date and termination date of the order. The termination date may be no later than one calendar year from the date the order is issued.

(e) Brief descriptions of the actions which are possible under the order.

(f) Provisions for the termination of withdrawals if essential minimum flows are jeopardized.

(3) Ecology must publish the order declaring a geographical area or a part of a geographical area to be suffering from drought conditions in a newspaper of general circulation in the area affected by the order.

(4) Persons may file written protest as to the contents of the order with ecology. Ecology will have fifteen calendar days from the date of receipt of the protest in which to make a determination as to its validity, using the procedure specified in WAC [173-166-050](#).

(5) A person who believes that an area should be declared to be suffering from drought conditions may petition ecology for such a declaration. Upon the receipt of such a petition, ecology will have fifteen calendar days from the date of receipt of the petition in which to make a determination as to its validity, using the procedure specified in WAC [173-166-050](#), and

provide a decision to the applicant. The petition should contain the following information:

(a) A description of the geographical area or part of a geographical area which is being requested for designation.

(b) The nature of the relief sought in requesting such a designation.

(c) The facts upon which the petition is based.

(6) Orders declaring areas to be suffering from drought conditions may, with the written approval of the governor, be amended one or more times to change the termination date, provided that the termination date of the order, as amended, is no more than two calendar years from the date the order is first issued.

(7) Orders declaring areas to be suffering from drought conditions may be issued for different areas of the state and sequentially for the same area if drought conditions persist.

WAC 173-166-070 Emergency drought permits. Ecology may allow water users to obtain water from alternate sources during drought conditions. To accomplish this, ecology may issue emergency drought permits authorizing withdrawals of ground water and surface water, including dead storage in reservoirs. Permits will be processed under the following criteria:

(1) Applicants must be conducting a previously established activity within a geographical area or part of a geographical area declared to be suffering from drought conditions.

(2) An application will be processed if the water user is receiving, or is projected to receive, less than seventy-five percent of normal water supply, as the result of natural drought conditions, for the previously established activity and experiencing, or is expected to experience, undue hardship as a result.

(3) Ecology, plus all state and local agencies with authority to issue permits or other authorizations in connection with emergency actions authorized under the provisions of this chapter, will have fifteen calendar days from the date of receipt of the respective application(s) in which to provide a decision to the applicant. Agencies with authority to review applications for emergency drought permits, such as under RCW [75.20.050](#), and affected Indian tribes will have fifteen calendar days from the date ecology receives the application in which to provide ecology with an opinion as to any effects of the proposed withdrawal.

(4) Waters authorized to be withdrawn must be used in relation to a previously established activity as defined in this chapter. The permit must not cover irrigation of new lands, restoration or enhancement of the fisheries resource, or a water supply in addition to the normal amount used in the past by individuals, private entities, or public bodies.

(5) Waters to be withdrawn must constitute an alternate (supplemental) water supply to the user's normal source of water.

(6) The withdrawal must not reduce flows or levels below essential minimums necessary to assure the maintenance of fisheries requirements and to protect federal and state interests including, but not limited to, power generation, navigation, water quality, and existing water rights.

(7) Emergency drought permits issued under this chapter will be temporary in nature and must expire no later than the expiration date of the order declaring the area in which the permitted activity is authorized to be suffering from drought conditions.

(8) Priority will be given to domestic and irrigation uses of water for any emergency withdrawals authorized under this chapter.

(9) Emergency drought permits issued under this chapter must contain provisions for termination should the withdrawal reduce flows or levels below essential minimums as defined in this chapter.

(10) To expedite the issuance of emergency drought permits, ecology is authorized to process

the applications and issue the permits without compliance with requirements for:

- (a) Notice of newspaper publication.
- (b) The State Environmental Policy Act.

WAC 173-166-080 Temporary transfers of water rights. (1) Ecology may approve emergency water right changes in order to effect a transfer of water between willing parties. Water right changes can include purpose of use, place of use, and point of diversion.

(2) Examples of possible water right transfers include, but are not limited to, the following situations:

(a) A water right holder may choose to reduce irrigated acreage and transfer the unused water to another water right holder whose normal water supply is decreased by drought conditions. The acreage irrigated with transferred water on the second parcel may not exceed the acreage reduction on the first parcel.

(b) A water right holder may transfer a water right from an out-of-stream use to an instream use.

(c) Municipalities or other public bodies may transfer water between one another.

(3) Requests for water right transfers will be processed under the following criteria:

(a) Applicants must be conducting a previously established activity within a geographical area or part of a geographical area declared to be suffering from drought conditions.

(b) An application for a water right transfer will be processed if the recipient water user is receiving, or is projected to receive, less than seventy-five percent of normal water supply, as the result of natural drought conditions, for the previously established activity and experiencing, or is expected to experience, undue hardship as a result.

(c) All approvals by ecology for water right transfers under this chapter will be temporary in nature and will be for the purpose of alleviating drought conditions. These approvals must terminate no later than the expiration date of the order which declares the area to be suffering from drought conditions.

(d) Water right transfers between willing parties may be approved when an emergency exists only if such a transfer will not affect existing rights whatsoever, or reduce flows or levels below essential minimums, or adversely affect federal and state interests including, but not limited to, power generation, navigation, and water quality.

(e) Water rights may be transferred within areas declared to be suffering from drought conditions. Water rights may also be transferred from outside an area declared to be suffering from drought conditions into an area declared to be suffering from drought conditions, provided such a transfer of water is physically possible and is consistent with the provisions of [RCW 90.03.380](#), [90.03.390](#), and [90.44.100](#). Water rights will not be transferred from within an area declared to be suffering from drought conditions to outside that area.

(f) To expedite water transfers during drought conditions, ecology can approve temporary changes in water rights without compliance with requirements for:

- (i) Notice of newspaper publication.
- (ii) The State Environmental Policy Act.

(g) In those cases where temporary water transfers require court approval while general adjudication proceedings are ongoing, ecology will assist the court in coordination, maintaining communications, and providing technical assistance when requested.

(h) The temporary changing of a water right under this chapter will not be admissible as evidence in either supporting or contesting the validity of water claims in a general adjudication of water rights in the state of Washington.

(i) Ecology, plus all state and local agencies with authority to issue permits or other

authorizations in connection with emergency actions authorized under the provisions of this chapter, will have fifteen calendar days from the date of receipt of the respective application(s) in which to provide a decision to the applicant. Agencies with authority to review applications for temporary water right transfers, such as under RCW [75.20.050](#), and affected Indian tribes will have fifteen calendar days from the date ecology receives the application in which to provide ecology with an opinion as to any effects of the proposed transfer.