

BRIEFING PAPER ON
LEGISLATION AND FUNDING
RELATED TO
WATER AVAILABILITY AND QUALITY

Office of Program Research

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Legislation and Funding Related to Water Availability and Quality

Summary

One of the House Capital Budget Committee's 2004 interim projects is a review of water-related legislation and funding over the past four biennia. This briefing paper, involving consultation between Agriculture and Natural Resources, Appropriations, and Capital Budget committee staff, describes water allocation in Washington State, describes water quality and water availability/resource efforts, summarizes legislative initiatives and funding for water quality and resource programs and activities, and identifies potential policy and legal issues related to water quality and resources.

Water-related programs and expenditures typically are divided into those dealing with water quality and those dealing with water resources (quantity/supply). Clean water in sufficient quantities is needed throughout the state to meet municipal, agricultural, fish and wildlife, hydroelectric, non-municipal drinking water, and other needs. As the supply of water fails to accommodate all these needs in many areas of the state for a variety of reasons, competition for the limited supply increases as does the number of disputes. The state is at the center of these issues since it is responsible for allocating and overseeing the use of water in the state for the benefit of the public. Generally, new rights to use water are established under a permit system. The primary policy approach for water resource management is planning on a watershed basis. There are 62 water resource inventory areas (WRIAs) for water management purposes. Other water resource efforts include funding programs and facilities related to water reclamation/reuse, conservation and efficiency of water use, water storage, water mitigation efforts, and trust water rights. In addition, the state has several programs to prevent or remedy water pollution to ensure that available water is safe and clean. (See Appendix 1 for a summary of the various programs funded in the operating and capital budgets.)

Since 1997, the legislature has appropriated about \$2.2 billion for water programs and projects, with approximately \$1.8 billion in the capital budget and \$361 million in the operating budget. Approximately two-thirds of the \$2.2 billion was for water quality and the other third was for water resources.

Policymakers face a number of significant water issues including water rights disputes, inadequate water resources to meet all the needs throughout the year, meeting federal water quality requirements, and completing and implementing watershed plans.

Water Allocation, Rights, and Disputes

Overview

The creation and allocation of water rights primarily is a matter of state law. Water

allocation in Washington, like most of the west, is based on the prior appropriation doctrine. (This is different from the east coast, where water allocation historically has been based on riparian rights - ownership of land next to water.) The common law doctrine of prior appropriation has been codified in Washington over time, beginning with surface water in 1917 and groundwater in 1947. This doctrine generally holds that: (1) the first or earliest user of water receives priority (first in time is first in right); (2) the water right is for the amount of water put to a beneficial use; and (3) continuation of the water right over time is conditioned on continuing beneficial use of the water without waste (use it or lose it).

The statutory process requires that, except for exempt well uses, a person seeking a new water right first apply for a permit from the Washington State Department of Ecology (DOE). The department looks at whether there is available water, whether the permit would result in a beneficial use of water, whether issuing the permit is in the public interest, and whether existing water right holders would be adversely impacted. If these requirements are satisfied, DOE grants a permit allowing the applicant to develop the water right. Once water has been put to use as authorized, the applicant receives a water right certificate from DOE. The right is attached to the real property associated with the beneficial use; if sold or transferred, the water right is transferred with the land. While a water right issued by DOE initially is free (except for any processing or administrative fees), once issued it becomes a property right of the holder and has value. The water right can be modified regarding its use, its point of diversion/withdrawal, or its place of use with the approval of DOE; the agency may approve the modification request if it finds the change does not harm existing water rights (both senior and junior to the right being modified). These permit administrative decisions by DOE are appealable to the Pollution Control Hearings Board, and from there to superior court.

In addition to creating water rights through the permit system, DOE may establish reservations of water by rule for a variety of reasons, including instream flow requirements. These are treated as water rights by statute and the priority date is the effective date of the rule. These rules are subject to review by the superior court under the Administrative Procedure Act.

State law required that those claiming that they had historical water rights perfected under a variety of state doctrines prior to enactment of the 1917 and 1945 codes must have filed statements of claims in DOE's Water Rights Claims Registry. The priority of the claims filed when the registry was temporarily reopened in 1997 may be affected by the date the filing was made. Water rights established under federal law, including water reservations for the federal government and tribes, must be recognized by the state and may be among the most senior water rights.

Part or all of a water right may be lost for non-use. The relinquishment statute provides that a water right, or a portion of one, that is not used for five consecutive years is forfeited unless one of the statutory exceptions apply. In addition, the state Supreme Court has determined that water rights may be lost due to the common law principle of abandonment.

Between permits and certificates issued by the department and claims filed by water users, much of the water in the state has been allocated. In several areas of the state, often during particular times of the year, there is not enough water available to satisfy the needs of all the water right holders. Under the prior appropriation doctrine, the junior water rights holders cannot use the water if using the water would adversely affect senior water right holders.

Water permits/certificates and statements of claims provide DOE with an estimate of how much water has been appropriated in a particular watershed for purposes of making decisions regarding applications for new and revised water rights, but this information generally is insufficient to quantify individual water rights. While DOE administrative authority includes enforcement authority under the codes, the Supreme Court has found that there are limitations on DOE's ability to resolve disputes involving the potential impairment of one water right by the use of another water right. Generally then, under current law, quantifying and prioritizing existing water rights must be undertaken through court action rather than agency regulatory actions. This court action can either be a general adjudication, which determines all the water rights in a particular body of water or watershed, or specific cases which determine the water rights of the few parties involved. The United States has consented to having its water rights determined by a state court through general adjudication. There currently is one general adjudication under way in the state; it is for the Yakima River Basin and began in 1977. There are over 167,000 unresolved water claims pending in the state registry.

Although much of the water rights cases and disputes have focused on surface water, the Water Code applies to both surface water and groundwater. Recently, the relationship between the two is becoming a larger and complicating issue for water right holders, DOE, the courts, and policymakers.

Water Resource Challenges

As the supply of water increasingly fails to meet the needs of all water right holders in several areas of the state, the priority system under the prior appropriation doctrine becomes more critical, disputes become more frequent, and policymakers search for ways to best serve the needs of the public and the water right holders. The supply of water in some areas is insufficient at times due to several reasons including growth of municipalities, accommodating in-stream flows necessary to protect fish under the Endangered Species Act, growth in water needs of existing non-municipal water right holders, and less available water in some years due to climate conditions. Examples of watersheds or river systems in the state facing water supply issues and water rights disputes include the Yakima River Basin, the Columbia/Snake River Basin, the Methow River, the Walla Walla River, the Nooksack River, and the Skagit River. There are many other areas facing potential water supply/rights challenges such as the Lummi Tribe case and related water rights in Whatcom County.

Instream Flows

Instream flow requirements may affect the amount of water available in a watershed. Instream flows generally refer to the quantity of water that is needed in a river to protect instream

values such as fish and wildlife, water quality, scenic values, and navigational values. Instream flows usually are set by rule by DOE based on several water-related statutes, but may also be found to exist based on federal law (including Tribal rights).

When DOE establishes an instream flow by rule, the priority date is the date the rule was adopted. Although an instream flow rule cannot impair the use of a senior water right, a subsequent transfer of a senior right cannot impair the instream flow rule. Any rights senior to the date the rule was adopted are not affected by the rule. DOE may purchase or lease senior water rights to put into trust for instream flows. The water right placed into trust has the same priority date of the original owner.

Recent State Efforts to Address Water Availability Issues

In recent years, the state, in concert with the federal government, tribes, and a variety of other groups and water right holders, has undertaken a variety of efforts to address water availability/supply issues. State efforts include programs or facilities and related funding to increase the supply of available water (such as reservoirs and water reclamation), for watershed assessments and planning, for conservation of water (agriculture water irrigation efficiency incentives), for stricter regulation of existing water rights (metering), for mediating water disputes, for purchasing or leasing water rights for water trusts/banks, and for mitigating the effects of new water rights.

Water Quality

Background

While it historically has been illegal to pollute water, it was in 1971 that Washington State enacted the Pollution Control Act, which seeks to prevent pollution at the source. The federal government adopted the Clean Water Act in 1972. The state DOE is delegated authority to implement the permit program required by this federal law and the federal law's total maximum daily load (TMDL) provisions (see page 5 for a description of TMDLs). Washington State has established a comprehensive water pollution control program.

The Clean Water Act

The federal Clean Water Act (CWA) sets a national goal to restore and maintain the chemical, physical, and biological integrity of the nation's waters and to eliminate pollutant discharges into navigable waters. The CWA sets effluent limitations for discharges of pollutants. "Pollutant" is defined in the CWA to include a variety of materials that may be discharged into water through human activities, construction or industrial processes, or other methods. Washington law requires all pollution dischargers to use all known, available, and reasonable methods of waste water treatment before discharge to prevent pollution. The Washington Department of Ecology (DOE) is delegated federal CWA authority by the United States Environmental Protection Agency (EPA). DOE is also the agency authorized by state law to implement state water quality programs.

The CWA requires states to adopt standards to protect fish and other aquatic life and to protect humans using water for drinking and recreation. These water quality standards are rules that specify the desired water quality to be achieved or maintained and that protect existing water quality from degradation. Washington's water quality standards consist of designated uses, criteria necessary to protect those uses, and the Antidegradation Policy, which establishes procedures for regulating an activity that might affect a particular water body.

Section 303(d) of the federal CWA requires states to prepare a list every two years of the specific water bodies that do not meet water quality standards (the "303(d) list"). The DOE must develop water cleanup plans for all water bodies on the 303(d) list. A water cleanup plan (known as a "total maximum daily load" or "TMDL") includes a technical assessment of the impaired water body, an analysis of the amount that pollution needs to be reduced by to meet water quality standards, an implementation plan to control pollution from various sources, and a monitoring plan to assess effectiveness.

Discharge and Stormwater Permits

The CWA establishes the National Pollutant Discharge Elimination System (NPDES), a permit system to regulate wastewater discharges from point sources to surface waters. "Point sources" are defined generally as discernable, discrete, and confined conveyances from which pollutant discharges can or do occur. NPDES permits are required for anyone who discharges wastewater to surface waters or who has a significant potential to impact surface waters. A wastewater discharge permit places limits on the quantity and concentrations of contaminants that may be discharged. Permits may require wastewater treatment or impose operating or other conditions, including monitoring, reporting, and spill prevention planning. NPDES permits are valid for five years but may be renewed.

In addition to its NPDES permit responsibilities, the DOE administers a state program for discharge of pollutants into state waters. State permits are required for certain commercial, industrial, and municipal government discharges. The DOE issues both individual permits (covering single, specific activities or facilities) and general permits (covering a category of similar dischargers) in the state and NPDES permit programs. Activities covered by NPDES permits include construction activities, industrial operations, stormwater discharges, and application of aquatic pesticides. DOE establishes annual fees for expenses for issuing and administering state and NPDES discharge permits.

The federal CWA was amended in 1987 to classify stormwater discharges from certain industries and municipalities as point sources of pollution requiring NPDES permits. The EPA stormwater regulations implementing this federal requirement established two phases for the stormwater permit program. Phase I stormwater NPDES permits were issued to cover stormwater discharges from eleven categories of industrial activities, construction sites involving five or more acres, and municipalities with a population greater than 100,000. Phase II permits are required for stormwater discharges from construction sites disturbing between one and five acres and for municipalities not meeting the Phase I population threshold if they are located in

census-defined urbanized areas or meet certain requirements.

The Safe Drinking Water Act

The federal Safe Drinking Water Act (SDWA) established the framework for regulation of public drinking water systems. At the state level, the Department of Health implements the SDWA under an agreement with the EPA. The EPA provides federal funds to the state to cover a portion of the cost of administering the SDWA. The state Department of Health also administers the state laws for smaller drinking water systems. Individual drinking water wells for single family homes are not regulated by the state.

State Capital Programs

In addition to the regulatory programs in DOE and drinking water programs in the Department of Health, there are several capital budget programs focused on water quality. These programs generally provide grants or loans to local governments for wastewater treatment, stormwater management, and animal waste management facilities. These include the Centennial Clean Water Program and the Water Pollution Control Revolving Fund. In addition, the Drinking Water Assistance Program and the Water System Acquisition and Rehabilitation Program administered through CTED and the Department of Health, and the Public Works Trust Fund, provide capital funds for supplying safe drinking water.

Water-Related Legislation

Since 1997, the legislature has considered many bills relating to water quality, water resources, or both. Most of the enacted measures relate to water resources, particularly watershed planning and management. Following is a brief summary of some of the most significant water-related bills that were enacted, including a summary of funding over the last four biennia that relates to the bill or the subject of the bill.

Drinking Water

In 1997, **E2SHB 1769** added provisions relating to the Drinking Water Assistance Account created in 1995. These provisions included coordination of the Department of Health, the Department of Community, Trade, and Economic Development, and the Public Works Board in the management of federal funds from the Drinking Water State Revolving Fund. This fund provides federal and state matching funds in the form of low interest loans for capital improvements that help ensure local public water systems provide safe drinking water. Over the last four biennia, \$95 million has been appropriated in the operating budget and \$463 million from the Drinking Water State Revolving Fund and the Public Works Trust Fund in the capital budget for drinking water purposes.

Water Quality

In 1998, **SSB 6161** made significant changes to the Dairy Nutrient Management Program created in 1993. The federal Clean Water Act requires the regulation and prevention of discharges from farms into surface waters of the state. Inspections were mandated every two years and all dairy farms are required to have a dairy nutrient management plan. In 2003, **ESSB 5889**, in response to federal rules, requires the expansion of the Dairy Nutrient Management Program to cover all animal feed operations by 2006 that are required to have a federal discharge permit. The renamed Livestock Nutrient Management Program is transferred to the Department of Agriculture (from the Department of Ecology). Over the last 4 biennia, including 2003-05, \$17 million was appropriated from the capital budget and about \$2 million was added from the operating budget for dairy and livestock waste management programs that were the subject of these two bills.

Also in 1998, **HJR 4209** amended the state constitution and **HB 2717** implemented this change to allow local governments providing storm water or sewer services to use public moneys or credit derived from the operating revenues from these services to assist private parties to obtain equipment to conserve or more efficiently use storm water or sewer services. Low cost financing must be repaid unless the assistance supports the poor or infirm.

Both the United States and the state Supreme Courts have held that DOE may condition water resource-related conditions (such as instream flow requirements) on certain water quality certifications. In 2003, **ESSB 5028** clarified that DOE does not have authority to impose water resource requirements generally using state water quality authority. Water resources conditions imposed under water quality authority cannot impair the exercise of an existing water right permit, certificate, or claim, except that DOE may require mitigation or remedies on federally-licensed hydropower projects to the extent there is substantial evidence the project causes water quality issues. With certain exceptions, DOE is authorized to levy civil penalties for water code violations; generally, DOE is to use education, issue warnings, and seek voluntary compliance for water code violations before seeking civil and criminal remedies.

In 2004, **ESSB 6415**, in accordance with federal Clean Water Act requirements, required DOE to include pollutant specific, water quality-based effluent limitations in construction and industrial storm water general permits if there is a reasonable potential to cause or contribute to a state water quality standard being exceeded. Both technological and water quality-based effluent limitations may be expressed in terms that are narrative or numerical, or a combination of both. General permits must include specified adaptive management mechanisms. \$536,000 was added in the operating budget for construction and industrial stormwater general permits.

Water Resources

Most enacted bills dealing with water supply/resources focused on planning or management of water in a watershed. Others focused on making water more available through conservation, or through reclaimed water for certain purposes. The 2004 Supplemental

Operating Budget established the Water Resources Administration and Funding Task Force to develop proposals/options for funding the state's water resources programs, both operating and capital. The task force is to report its findings and recommendations by December 15, 2004. (Section 301(20) of **ESHB 2459**.)

In 2003, **ESB 5014** created a subaccount in the Public Works Assistance Account to receive appropriations for grants by the Public Works Board for water storage and water systems facilities projects.

Reclaimed Water

In 1997, **ESSB 5725** and **2SHB 1817** expanded water reuse under the Reclaimed Water Act adopted in 1992. Reused or reclaimed water generally is effluent derived from a wastewater treatment system that has been treated so that it is suitable for most beneficial uses except drinking water. Under the Reclaimed Water Act, permits are required from the Department of Health and DOE and can only be issued to a local government or the holder of a water quality discharge permit. Reclaimed water may be used for surface spreading if it meets criteria for groundwater recharge and is incorporated into a sewer or water comprehensive plan. **ESSB 5725** allows the owner of a wastewater treatment facility that is reclaiming water to have the exclusive right to that water, although such use cannot impair any existing downstream water right. **2SHB 1817** authorized five reclaimed water demonstration projects; these were at Ephrata, Lincoln County, Royal City, Sequim, and Yelm. All but Lincoln County participated in and completed the pilot projects. A capital budget appropriation of \$10 million was provided for the pilot projects authorized in **2SHB 1817** (a proviso in the Centennial Clean Water Program). In addition, \$1.6 million was added in the 1999-01 operating budget for water reclamation purposes related to the program that was amended by **ESSB 5725**.

In 2001, **SSB 5925** authorized "agricultural industrial process water" to be used for irrigation and other agricultural-related uses. Water rights that substitute use of reclaimed water are not relinquished.

Conservation and Irrigation Efficiency

SHB 1272, enacted in 1997, authorized formation of Water Conservancy Boards to facilitate sales, transfers, and exchanges of water rights. \$290,000 was added in the 1999-01 operating budget for conservancy boards. In 2001, **ESHB 1832** made Water Conservancy Boards more functional.

In 1999, **SHB 1677** authorized irrigation districts to assist landowners finance equipment enabling the more efficient use of water on the landowner's property. A state constitutional amendment was adopted in 1989 that allowed local governments engaged in the sale or distribution of water to provide financial assistance to landowners for the conservation or more efficient use of water. **SHB 1677** expanded this financial assistance to irrigation districts. Approximately \$12 million has been appropriated in the capital budget for irrigation efficiency projects since 2001.

Water Rights

In 1997, **SHB 1118** reopened the water rights claim filing period. The new filing period for statements of claim for water rights opened on September 1, 1997 and closed at the end of that fiscal year. The reopened filing period was for persons whose water rights claim pre-dates the water codes but who failed to file statements of claim for the rights during previous filing periods. Existing rights were not impaired, and the claims filed during the 1997 filing period are subordinate to previously issued water rights permits/certificates and claims filed during previous filing periods.

Under **ESSB 6277** in 2000, an applicant for a new water right or for a change or transfer to an existing water right may initiate a cost-reimbursement agreement with DOE if the applicant agrees to pay for the processing of all permit applications affecting the same water source and that are ahead of the applicant.

In 2001, **ESHB 1832** authorized two lines for water permit requests: applications for changes to existing water rights may be processed independently of applications for new water rights from the same source or supply. Also, modifications were made to provisions dealing with water right transfers, family farm water permits, reclaimed wastewater, and trust water rights.

Also in 2001, **SSB 5910** added several temporary nonuses of a water right that are allowable nonuses under the relinquishment statute. These include a temporary reduction in the need for irrigation due to weather conditions, agreements to buy back electricity needed to use water for irrigation, conservation of water under the Yakima River Basin Water Enhancement Project, and crop rotation.

Municipal Water Resources.

In 1997, **SSB 5505** required DOE to assist applicants find a safe and adequate supply of water when such assistance is requested, particularly for public water systems. The supply of water must be consistent with the local land use plan and OFM population forecast, and water for public water systems must also be consistent with watershed plans and water system plans.

In 2003, **2E2SHB 1338** clarified that after September 9, 2003, municipal water rights would be treated like other water rights - only the amount put to beneficial use could be covered by a certificate issued by DOE. Prior to this, water rights for municipalities were thought to cover the system capacity, or pumps and pipes, regardless of the amount of water actually being put to use at any one point in time. Under this "pumps and pipes" approach, the municipality could increase its actual beneficial use of water over time under its existing water right. A court decision holding that a private developer's final water right could not be issued for more than the amount of water the developer had put to beneficial use raised legal questions regarding municipalities. 2E2SHB 1338 grandfathered in the prior pumps and pipes approach and adopted the court's holding for new municipal water rights issued by DOE. This legislation also established a version of the growing communities doctrine. A municipal water right can be

automatically modified consistent with modifications to a water plan to accommodate growth under certain circumstances. The legislation authorized the Department of Health to spend up \$400,000 per year through 2007 to develop and implement water conservation rules; in order to maintain their flexibility and certainty in water rights, public water systems must comply with the new conservation rules.

Reservoirs

In 2000, **E2SHB 2867** authorized DOE to issue reservoir permits for storage of water in natural underground geological formations as part of underground artificial water storage and recovery projects.

Watershed planning and management

In 1997, the legislature enacted the first of several major watershed planning bills. **2SHB 2054** would have authorized the establishment of water resource inventory area (WRIA) planning groups. The governor vetoed most of this bill, so WRIA planning groups were created the following year by ESHB 2514.

ESHB 2514 specified that all the counties in the WRIA, the largest city or town, and the water supply utility using the most water from the WRIA initiate the planning group. Multi-WRIA planning groups are also authorized (initiated by all counties in each, the largest city in each WRIA, and the largest utility in each WRIA). These entities designate a lead agency. The local governments and water utility or utilities must invite any affected tribes and may invite state agencies to participate. The plan must include a water quantity component, which may include strategies for increasing water supply such as reclaimed water, aquifer recharge, and water conservation. The plan may include strategies for improving water quality, fish habitat, and a recommendation for instream flows. A state grant program is established to provide financial assistance for these planning efforts. The major changes made by this act to 2SHB 2054 include those participating in the planning group (interest groups and the general public no longer are formal participants on the planning group) and instream flows are a recommendation to DOE rather than being established by the planning group.

In 1999, **SHB 1826** authorized DOE to appoint a water master for each WRIA for which a plan has been adopted if the plan requests a water master and funding is available.

In 2001, **ESHB 1832** modified provisions relating to watershed management and provided additional planning money for phase 2. (Phase 1 is organization, phase 2 is for watershed assessments, and phase 3 is developing a plan recommending action). That same year, **SSB 5637** created a monitoring oversight committee to review the process of watershed-related monitoring and make recommendations.

In 2002, **EHB 2993** requires DOE to achieve compliance with the state's water laws through the use of water masters, stream patrollers, and other compliance staff to the extent funding is available. Provisions relating to reclaimed water, trust water rights, and reservoir or

secondary permits were broadened. The Water Conservation Account was created.

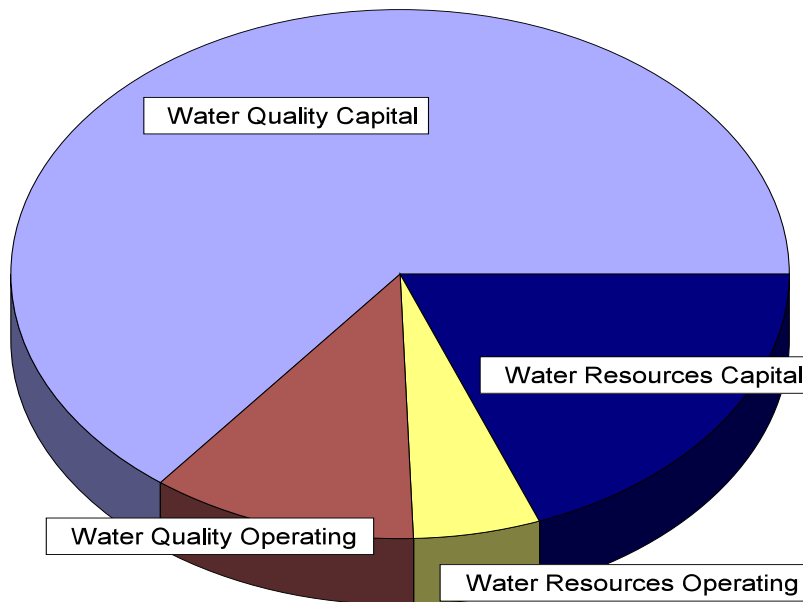
In 2003, **ESHB 1336** authorized grants for phase 4 watershed planning by WRIA planning groups. Phase 4 is watershed plan coordination and implementation. A detailed implementation plan, its requirements, and its effect are described. Approximately eight million dollars was appropriated in the 2001-03 budget for watershed planning grants, which was carried forward in the 2003-05 budget. **ESHB 1640** authorizes DOE to use the trust water rights program in the Yakima River Basin for water banking.

Also in 2003, **ESB 5053** provided statutory authority to enable a variety of local government entities providing water-related services to coordinate efforts to adopt and implement watershed plans and to use some local revenues/funds for this purpose.

Water-Related Budget Appropriations

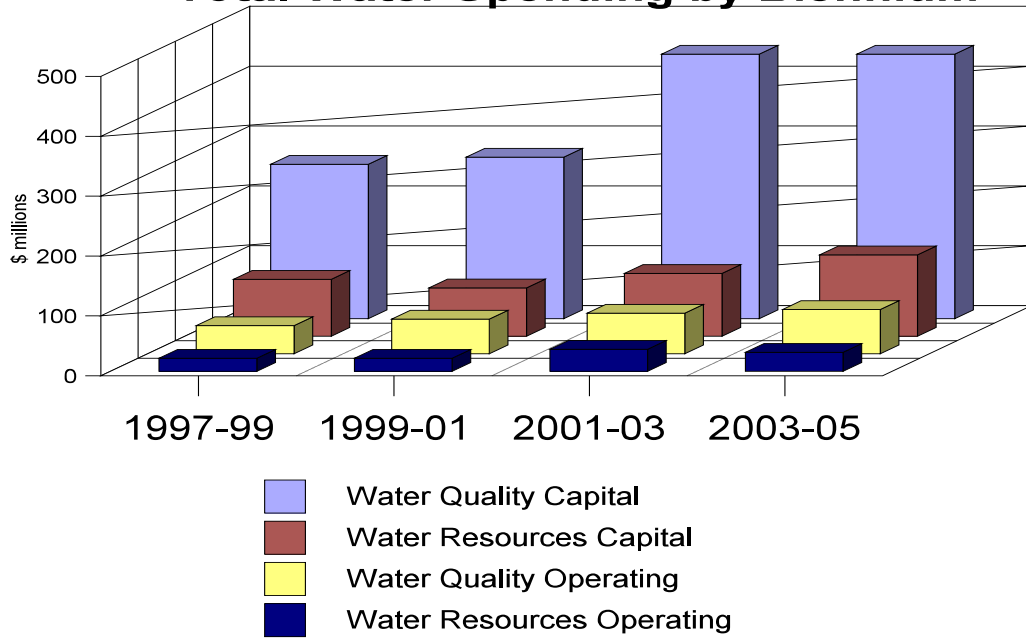
Since 1997, the legislature has appropriated about \$2.2 billion directly for water programs and projects, over \$1.8 billion in new appropriations in the capital budget and about \$361 million in the operating budget. (See appendix 2)

Total Water Spending from 1997-2005 (\$2.2 billion)



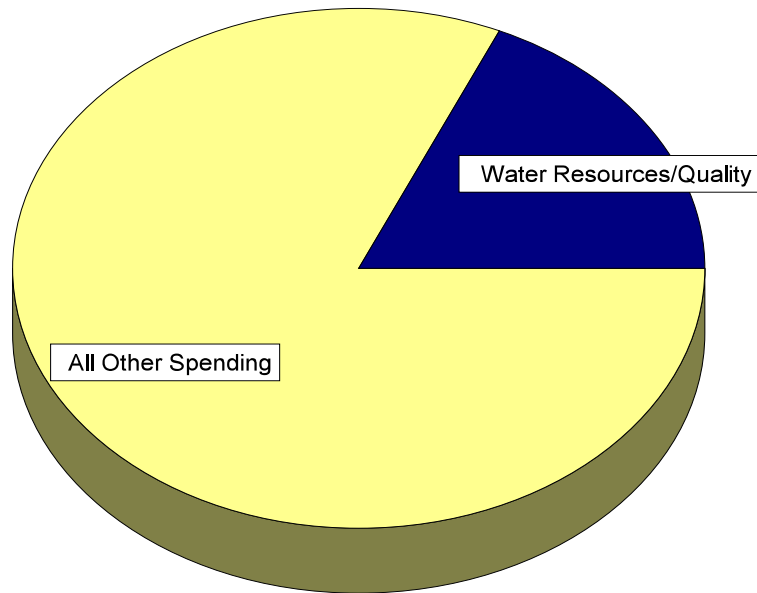
Water quality capital appropriations were 65% of total operating and capital budget appropriations over the last 4 biennia, while water resources capital was 19%, water quality operating was 11%, and water resources operating was 5%.

Total Water Spending by Biennium

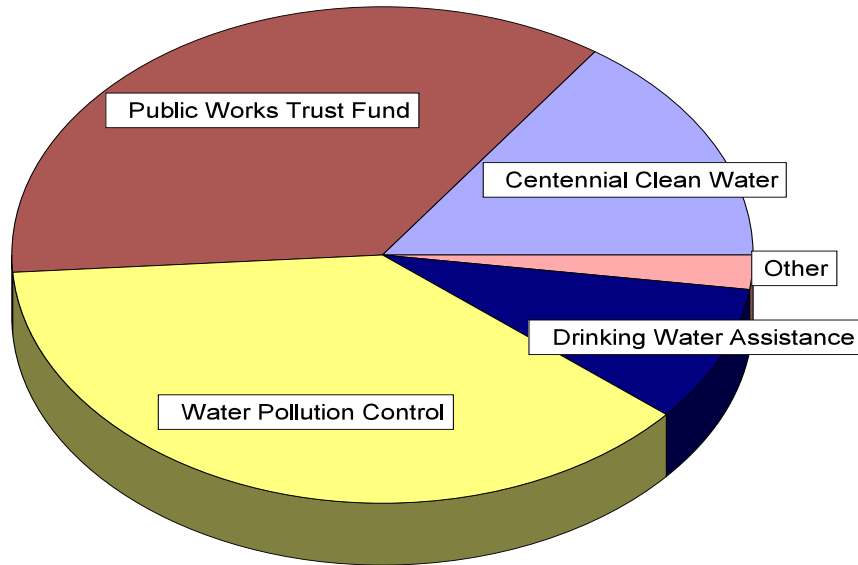


Capital Spending Since 1997 (\$9.9 billion)

Water-related spending was 18% of the total capital budget over the last 4 biennia.



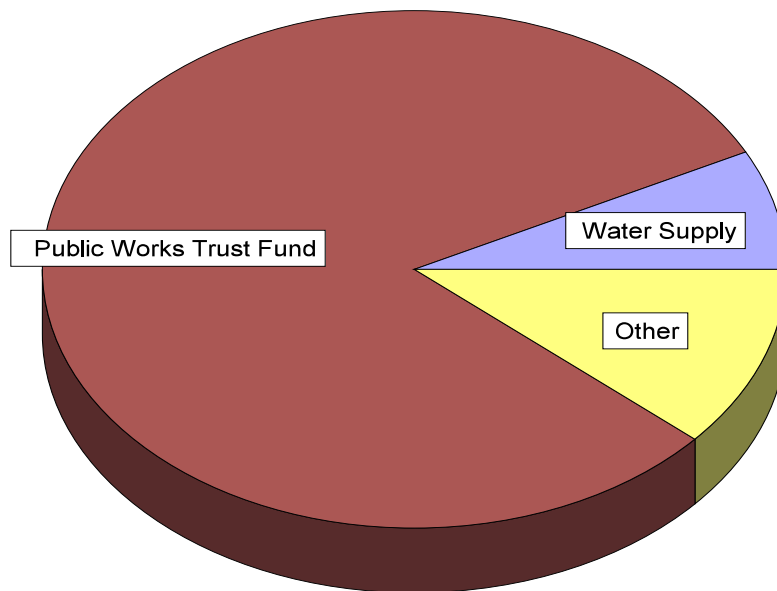
Water Quality Capital Since 1997 (\$1.4 billion)



The Water Pollution Control Revolving Fund and Centennial Clean Water grants and loans accounted for 53% of water quality capital spending over the past 4 biennia, the Public Works Trust Fund was 36%, the Drinking Water Assistance Account was 9%, and other grants and loans were 2%.

Water Resources Capital Since 1997 (\$417m)

The Public Works Trust fund accounted for 81% of Water Resources appropriations in the capital budget over the last 4 biennia; water supply accounted for 8%, and 11% was other.

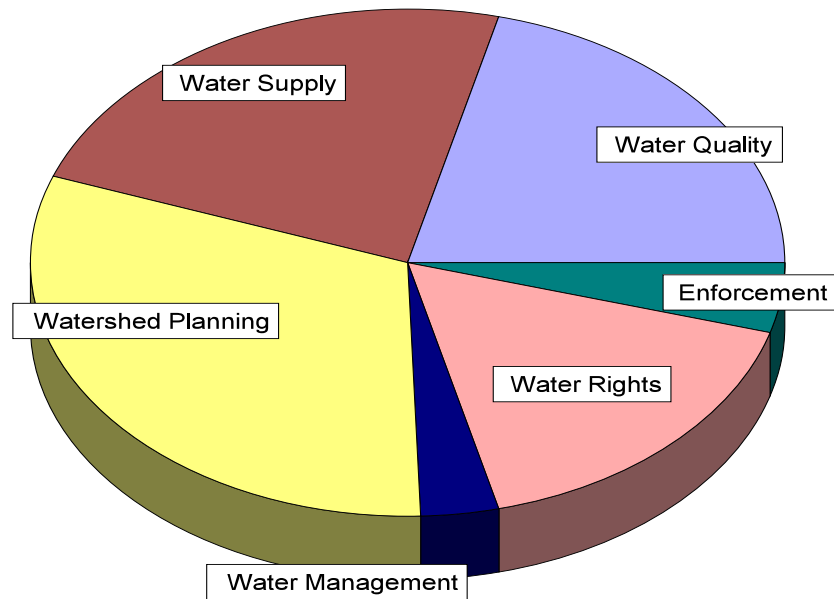


See Appendix 2 for a more detailed summary of capital appropriations.

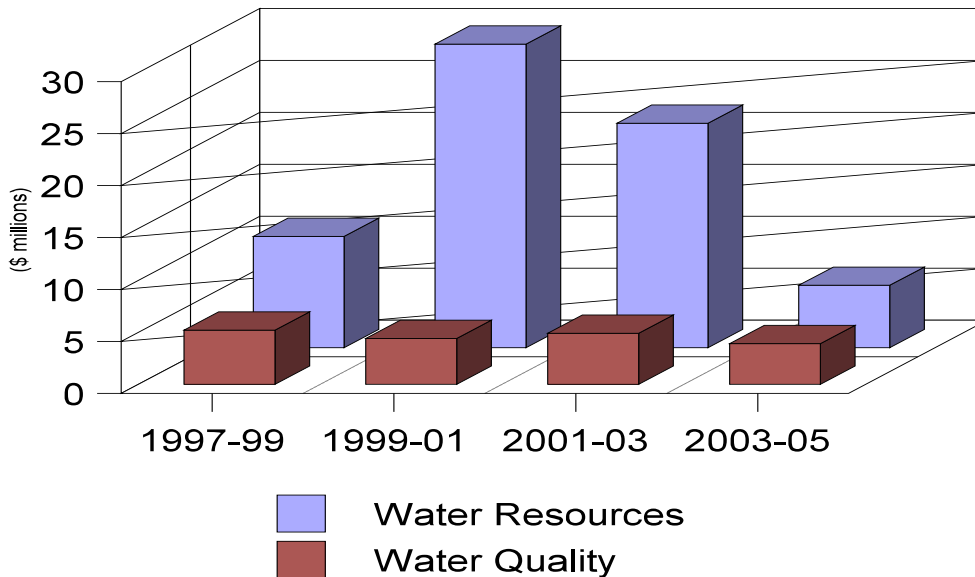
The operating budget has increased appropriations above the base budget (or maintenance level) for various water programs in each of the last 4 biennia. (See Appendix 3.)

Water Operating Adds Since 1997 (\$86 million)

Of the water operating budget adds in the last 4 biennia, 31% were related to watershed planning, 17% to water rights, 23% to water supply, 22% to water quality, 4% to enforcement, and 3% to water management.



Water Operating Adds by Biennium



Potential Issues Facing Policymakers

Several converging circumstances likely will make an already complicated and contentious area even more difficult for policymakers, regulators, and users of water throughout the state. Recent droughts, increasing demands for water from a variety of users, regulatory issues, dispute resolution challenges, impacts on water availability from protecting fish and wildlife under the Endangered Species Act, federal water quality requirements, and other factors make water availability and water quality challenging from a policy and fiscal standpoint. The challenges include:

- (1) **Junior water right holders more frequently are seeing water restricted or not available** at certain times of the year in some areas of the state. What role, if any, does the state have in this area and does it change depending on how the water would be used?
- (2) **Water dispute resolution, particularly quantifying existing water rights.** In 2002, the legislature created the Water Disputes Task Force to study alternatives to resolve water disputes and make recommendations to the legislature. The task force's December 2003 report recommends, among other things, that a specialized water court be created as part of the superior court system with exclusive jurisdiction to hear general adjudications, appeals of Pollution Control Hearings Board water rights decisions, and challenges of instream flow rules. The 2005 Legislature may consider this and other water dispute resolution recommendations.
- (3) **Surface water and groundwater are interrelated** and addressing both of these at the same time is likely to become more important in many areas of the state in the near future.
- (4) **Watershed plans both for water resources/quality and to protect salmon** are being completed and likely will be requesting state assistance related to instream flows and other planning features, and likely will be requesting state capital funds for projects to make water more available in these watersheds.
- (5) **A variety of issues related to water quality** include: implementing stormwater Phase II permit requirements; new water quality standards; the effect of endangered species listings on water quality requirements; and completing TMDLs according to the agreement between DOE and the EPA.
- (6) **Reclaimed water programs** and related water quality and water quantity implications.

- (7) **Monitoring outcomes of investing in water quality and water resources, and establishing performance measurements.**
- (8) **The findings and recommendations of the Water Resources Administration and Funding Task Force.**

Appendices

- Appendix 1: Description of major water programs funded in the operating and capital budgets.
- Appendix 2: Summary of operating and capital total water appropriations from 1997-99 through 2003-05.
- Appendix 3: Summary of operating budget increases (adds) for water programs from 1997-99 through 2003-05.

Appendix 1

Description of major water programs funded in the operating and capital budgets.

Many legislative appropriations to a variety of agencies impact water quality and water resources indirectly. This funding analysis focuses on appropriations for programs or projects where the funding is most directly targeted to water quality or water resources.

Water Quality

Programs characterized as water quality programs in this funding analysis include:

Centennial Clean Water, Water Quality Grants and Loans, and the Water Pollution Control Revolving Fund - These DOE programs provide grants/loans for planning, construction, and improving water pollution control facilities, for facilities that reduce stormwater pollution, and facilities for implementing agricultural best management practices.

Livestock (Dairy) Nutrients Management Program - This program provides funding to protect water from pollution from animal feeding operations.

Public Works Trust Fund - This program is administered by the Public Works Board with administrative services provided by the Department of Community, Trade, and Economic Development. It provides low-interest loans to local governments for a variety of public works projects, including the repair, replacement, or expansion of sanitary sewer and storm sewer facilities.

Drinking Water Assistance

These programs seek to ensure the supply of safe drinking water. There are both water quality and water resource components to these programs. The operating budget funding analysis is divided into these two components. The capital budget appropriations are include as water quality projects. The Water System Acquisition and Rehabilitation Program has \$4 million to help municipal water systems acquire and rehabilitate public water systems that have water quality problems or have deteriorated to the point that public health is an issue.

Water Resources

Programs characterized as water resources programs in this analysis include:

Water Supply Facilities - Funding for agricultural water supply and conservation projects, for the Yakima River Basin water storage feasibility study, for the Manastash Creek restoration project, and for other surface and groundwater storage and recovery projects.

Water Rights Purchase/Lease - Purchases or leases water rights for instream flows and other beneficial uses.

Water Irrigation Efficiencies - Funding for conservation districts to assist the agricultural community in implementing water conservation measures and irrigation efficiencies in fish critical basins.

Water Measuring Devices - Financial assistance to install water measuring devices at irrigation points of withdrawal. Priority is given to fish critical basins, locations participating in the Department of Wildlife's fish screen and voluntary compliance programs, and locations where watershed plans have indicated the need for measuring devices.

Water Rights Settlements - Funds have been provided for water rights mitigation and settlements (\$2.2 million for Quad Cities and \$525,000 for Sunnyside Valley Irrigation District).

Water Conveyance Infrastructure Projects - Provides funding to support early action watershed plan implementation, to provide more certainty for water availability in some circumstances, and to fund local government projects, particularly piping projects.

Public Works Trust Fund - This program is administered by the Public Works Board with administrative services provided by the Department of Community, Trade, and Economic Development. It provides low-interest loans to local governments for a variety of public works projects, including the repair, replacement, or expansion of drinking water facilities.

Appendix 2 Four-Biennia Water Funding Summary

(\$ in millions)

	1997-99	1999-01	2001-03	2003-05	Total
Operating					
Water Quality					
DOE operating	33.6	39.6	43.3	42.8	159.3
DOH operating	13.7	18	25	31.2	87.9
Total WQ operating	47.3	57.6	68.3	74	247.2
Water Resources					
DOE operating	21.1	20	35.6	29.4	106.1
DOH operating	1.3	1.6	1.8	2.8	7.5
Total WR operating	22.4	21.6	37.4	32.2	113.6
Total Operating	69.7	79.2	105.7	106.2	360.8
Capital					
Water Quality					
Centennial Clean Water	60	62.5	50	44.9	217.4
Water Pollution Control	101.5	100.6	204.4	125.5	532
Water Quality Grants	5	5	3.5	3.5	17
Livestock Nutrients Program	3	3	5.5	1.6	13.1
Public Works Trust Fund	78.3	74.3	147	208	507.6
Drinking Water assistance	9.9	24.7	31.7	58.2	124.5
Total WQ Capital	257.7	270.1	442.1	441.7	1411.6
Water Resources					
Water Supply	2	10.2	6	13.7	31.9
Water rights purchase/lease	0	1	7	3	11
Water irrigation efficiencies	0	0	9.6	2.5	12.1
Water measuring devices	0	0	3.4	0	3.4
Reclamation projects	10	0	0.25	1.2	11.45
Water rights settlements	0	0	0	2.7	2.7
Water conveyance projects	0	0	0	5.8	5.8
PWTF	83.3	69.8	78.4	106.7	338.2
Total WR Capital	95.3	81	104.65	135.6	416.55
Total Capital	353	351.1	546.75	577.3	1828.15
Total Operating and Capital	422.7	430.3	652.45	683.5	2188.95

Note: This summarizes major water quality/resource programs; it does not include funding that may be providing indirect benefits. Capital is new appropriations only.

Appendix 3
Operating Budget Water Funding Adds Over Four Biennia
(\$ in thousands)

		1997-99	1999-01	2001-03	2003-05	Total Adds
Water Resources						
<u>Water Supply</u>						
DOE	In stream flows	0	0	600	1,043	1,643
DOE	Pine Hollow Study	300	0	0	0	300
DOE	Drought response	0	0	5,000	549	5,549
DOE	Water conservation/reuse	0	1,594	0	0	1,594
DOE	WA Conservatory Boards	0	290	0	0	290
DOE	Permit assistance	0	2,825	0	0	2,825
DOE	Gravel removal (in stream)	0	500	0	0	500
DOH	Drinking water	2,154	0	1,150	829	4,133
DOH	Reuse	129	1,356	0	0	1,485
DOH	Municipal water	0	0	0	1,098	1,098
DOE	Roza water storage	0	300	0	0	300
SCC	Tide gates	0	0	0	239	239
Total Water Supply		2,583	6,865	6,750	3,758	19,956
<u>Watersheds</u>						
DOE	Community watershed assistance	345	0	3,114	0	3,459
DOE	Watershed management/Cooperatives	1,100	1,998	200	0	3,298
DOE	Local watershed planning grants	3,900	6,600	0	0	10,500
DOE	Federal watershed planning	0	9,613	0	0	9,613
Total watersheds		5,345	18,211	3,314	0	26,870
<u>Water planning/management</u>						
DOE	Puget Sound Action Plan	528	0	0	0	528
DOE	Water storage task force	0	150	0	0	150
DOE	Gauges (in stream flows)	0	0	1,613	221	1,834
DOE	Groundwater data	0	0	125	0	125
DOE	Hood Canal	0	0	0	100	100
DOE	Total planning/management	528	150	1,738	321	2,737
<u>Water Rights</u>						
DOE	Change decisions	0	0	6,000	500	6,500
DOE	Decision-making/claim filing	2,000	1,722	540	0	4,262
DOE	Data	0	1,157	847	0	2,004
DOE	2002 legislation	0	0	439	0	439
DOE	Water purchase/lease	0	0	0	631	631
DOE	Mediation/adjudication	274	0	0	300	574
DOE	Municipal water rights (HB 1338)	0	0	0	50	50
Total water rights		2,274	2,879	7,826	1,481	14,460

		1997-99	1999-01	2001-03	2003-05	Total Adds
	<u>Enforcement</u>					
DOE	Water law compliance	0	1,120	1,148	0	2,268
DOE	Water resource legal support	0	0	318	0	318
DOE/DNR	Culverts	0	0	509	458	967
	Total Enforcement	0	1,120	1,975	458	3,553
Total Water Resources adds		10,730	29,225	21,603	6,018	67,576
Water Quality						
Ag	Pesticide surface water monitor	0	0	490	828	1,318
Ag	Herbicide study	0	0	0	50	50
DOE	Fertilizer regulation	417	0	0	0	417
DOE	UST program	195	0	0	0	195
DOE	Managing urban storm water	0	100	1,000	0	1,100
DOE	TMDL pollutant levels	0	3,333	787	0	4,120
DOE	Septic management strategy	0	0	175	0	175
DOE	Wastewater discharge permits	0	750	750	0	1,500
DOH	Puget Sound workplan	730	0	0	0	730
DOH	Drinking water	3,231	0	1,726	1,243	6,200
DOE	Storm water phase 2 permits	0	0	0	536	536
CC/DOE/Ag	Dairy/Livestock Nutrient Mgmt/CAFO	600	200	0	1,197	1,997
Total Water Quality Adds		5,173	4,383	4,928	3,854	18,338
Total Water Adds		15,903	33,608	26,531	9,872	85,914

Note: This summarizes new funding that was not part of the base (maintenance) level.