

State of Washington  
Joint Legislative Audit and Review Committee (JLARC)



# Water Conservancy Boards Review

Report 04-12

December 1, 2004

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The Joint Legislative Audit and Review Committee (JLARC) carries out oversight, review, and evaluation of state-funded programs and activities on behalf of the Legislature and the citizens of Washington State. This joint, bipartisan committee consists of eight senators and eight representatives, equally divided between the two major political parties. Its statutory authority is established in RCW 44.28.

JLARC staff, under the direction of the Committee and the Legislative Auditor, conduct performance audits, program evaluations, sunset reviews, and other policy and fiscal studies. These studies assess the efficiency and effectiveness of agency operations, impacts and outcomes of state programs, and levels of compliance with legislative direction and intent. The Committee makes recommendations to improve state government performance and to correct problems it identifies. The Committee also follows up on these recommendations to determine how they have been implemented. JLARC has, in recent years, received national recognition for a number of its major studies.

# WATER CONSERVANCY BOARDS REVIEW

REPORT 04-12



REPORT DIGEST

DECEMBER 1, 2004

STATE OF WASHINGTON

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REVIEW COMMITTEE

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## Study Mandate

In its 2002 Supplemental Operating Budget, the Legislature directed JLARC to review the operation of *water conservancy boards*. This report explains what water conservancy boards are and what they do, why Washington has these boards, how boards are supported at the state and local level, and how the work of the boards compares to similar work conducted by the Department of Ecology.

## Water Conservancy Boards

A water conservancy board is a unit of local government with the authority to make recommendations to Ecology on applications for *water right transfers*. The Legislature authorized counties to create these local boards as one way to speed up the processing of transfer applications. Ecology reviews the recommendations of each board and may affirm, reverse, or modify a board decision. If Ecology does not complete its review within a certain time period, the board decision becomes final.

Currently, 21 water conservancy boards operate in Washington — 16 in Central and Eastern Washington, and five in Western Washington. **Appendix 3 provides a profile for each board.**

## What Do Water Conservancy Boards Do?

This study looks at the operations of the boards from their inception in 1998 through the first quarter of 2004. In that time, boards have processed 265 water right transfer applications (see Figure 4 on pages 8 – 9 in the full report for more on the board application review process). Boards also educate people in their communities about water law and the transfer application process. Two boards offer an information exchange for people interested in buying or selling water rights. Finally, some boards use the review and appeal processes to air interpretations of water law that are different from Ecology's.

## Supporting the Work of the Boards

Water conservancy boards receive support at the local level in several ways: board members volunteering their time, fees that each board collects from applicants, and donated meeting space. Some boards also receive financial or other support from local governments in their area, usually the county government. Boards set their own fees for processing applications. These fees range from \$250 to \$1450 per transfer application. For comparison, statute sets the fee to file an application with Ecology at \$10.

At the state level, the Department of Ecology incurs costs primarily for training board members, providing the boards with technical assistance, and reviewing board decisions. For the 2001-03 Biennium, Ecology spent about \$507,500 performing these tasks.

### **Comparing Boards with Ecology in Processing Water Transfer Applications**

- Processing an application through a board costs **the state** about half as much as processing an application filed directly with Ecology (\$3600 vs. \$7000);
- Ecology addressed over six times as many applications as boards between 1998 and the first quarter of 2004 (the timeframe used for this study);
- On average, boards offer applicants a faster decision as compared to filing directly with Ecology (slightly less than a year vs. Ecology's four years);
- Boards and Ecology serve a similar mix of applicants;
- The public has a greater opportunity to review decisions on transfer applications that boards process as compared to applications processed by Ecology; and
- The percent of approved applications where the applicant receives less water than originally requested is about the same regardless of whether the applicant filed with Ecology or with a board (the quantity was reduced on about one-third of approved applications).

### **Two Issues/Two Recommendations**

A **first issue** to raise in conjunction with this study is a concern expressed by board members about inconsistencies within Ecology in the interpretation of water laws, rules, and policies. We do not have documentation that this is occurring; however, we also found nothing specifically preventing this from happening.

- **Recommendation 1. The Department of Ecology should design and implement a test for inconsistencies in interpretation of laws, rules, and policies in the review of water right transfer applications. If the results of the test indicate a problem, the agency should take steps to correct these inconsistencies.** Ecology should report to JLARC on the design of its test by February 2005; Ecology should report to JLARC on the outcome of this test and a plan to address any identified inconsistencies by July 2005.

A **second issue** to raise is the disparity among the boards as to what analyses board members themselves conduct on transfer applications vs. what they require an applicant or an applicant's consultant to provide. The choice a board makes can mean a difference of thousands of dollars to applicants.

- **Recommendation 2. The Department of Ecology should sponsor, as one of its board continuing education opportunities, a session on the subject of the wide disparity among boards as to who conducts the analyses to support board decisions. Ecology should invite county commissioners to participate.**

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**Prologue:** In its 2002 Supplemental Operating Budget, the Legislature directed JLARC to review the operation of *water conservancy boards* (boards).<sup>1</sup> This report presents JLARC’s review – the first comprehensive review of the boards undertaken by the Legislature since the Legislature authorized the creation of boards in 1997.

# CHAPTER ONE – WHAT ARE WATER CONSERVANCY BOARDS AND WHY DOES WASHINGTON HAVE THEM?

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## WHAT IS A WATER CONSERVANCY BOARD?

A water conservancy board is a separate unit of local government with authority to make recommendations to the state Department of Ecology (Ecology) regarding **water right transfers** (see Figure 1 for more on water rights and water right transfers).<sup>2</sup> A water right holder might apply for such a transfer to change where water is used or what it is used for. Applicants have a choice about where to file a water right transfer application: they may file with Ecology or with a local water conservancy board if a board operates in their county. A board, in turn, has the choice about whether or not to accept a water right transfer application for board processing.<sup>3</sup>

County legislative governments create water conservancy boards (subject to approval by Ecology), then appoint members to the boards to serve staggered, six-year terms. Counties choose to have either three- or five-member boards.

Currently, 21 water conservancy boards operate in Washington. As illustrated in Figure 2, the majority (16) are in Central or Eastern Washington, with five boards on the west side of the state. While legislation in 2001 authorized boards to be organized for multiple counties or by watershed, each board currently operates using the boundaries of a single county.

Water conservancy board members serve as **volunteers**. They bring to the task a variety of backgrounds and skill levels. Some have professional experience in fields such as engineering, law, or hydrology, while others are brand new to working with these concepts. They share a sincere desire to see progress on the processing of water right transfer applications in their communities.<sup>4</sup> Statute requires each board to have at least one member who is a water right holder and one member who is not a water right holder; statute also requires board members to meet minimum and continuing education requirements.<sup>5</sup> New water conservancy board appointees must attend a 32-hour training course presented by the Department of Ecology. Board members must then acquire eight hours of continuing education each year to remain in good standing. There are no additional knowledge- or skill-based requirements for board members.

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<sup>1</sup> ESSB 6387, Section 103; C 371 L02.

<sup>2</sup> A “transfer” means “a transfer, change, amendment, or other alteration of a part or all of a water right” (RCW 90.80.010(6)).

<sup>3</sup> Unlike Ecology, which must accept all water right transfer applications.

<sup>4</sup> This conclusion is based on our in-person and telephone interviews with representatives from all 21 boards.

<sup>5</sup> RCWs 90.80.050 and 90.80.040, respectively.

Figure 1.

**What is a water right?**

A water right allows its holder to take a certain amount of water from a specific spot and then use that water in a particular place for a particular time period for a particular beneficial purpose. For example, a farmer may take X gallons of water out of a river and use it to water his crops on his farm during an irrigation season, or a city may pump Y gallons of water from a series of wells to provide year-round drinking water to all the homes within the city limits.

Water rights have a special attribute often expressed as “*use it or lose it.*” Unlike having a car or a house, a water right holder may lose all or a portion of the quantity of water represented by a water right if the holder does not use the water (though state law provides a number of exceptions to this occurrence). The unused water reverts back to the public domain.

There are two types of water right applications. One type is an application for a *new* water right – a right that has never been established. A second type of water right application is a *transfer* or a change to an existing water right. As of July 2004, there were some 5300 pending applications for new water rights and 1200 pending applications for transfers. Water conservancy boards deal only with applications for water right *transfers*.

**What is a water rights transfer?**

Water right holders can request a transfer of their water rights if they want to make some kind of change in the existing right. For example, they may want to draw the water from a different place or use it to irrigate different acreage or switch it to a completely new use. Following the earlier example, the farmer might want to begin growing a crop that doesn’t require as much water, and the city might be interested in acquiring some of the water the farmer would no longer need in order to bolster its municipal supply. The two parties might find it mutually beneficial to propose a transfer.

**What do Ecology and water conservancy boards investigate when evaluating a water right transfer request?**

The investigation includes determining:

- **How much water is available to transfer?** Is it less than the amount on the paper version of the water right because of western water law’s “use it or lose it” requirement?
- **Will the proposed transfer impair (harm) other existing water rights?** This could be the water rights of a neighbor who already draws water from a given area, or it could be a minimum instream flow for fish.

For a detailed discussion about water rights and Washington water law, see [An Introduction to Washington Water Law](#) (January 2000), a publication of the state’s Office of Attorney General.



new water rights.<sup>6</sup> By 2001, the backlog had reached approximately 7000 applications – 2000 for transfers and 5000 for new water rights.

As the lag time grew between an applicant's filing of an application and Ecology's reaching a decision, pressure mounted to find ways to get more applications processed. Farmers, developers, cities, and others were thwarted in their development of major projects as they waited sometimes years for a water right decision.

## The Legislature Creates "Release Valves"

In part to address this mounting pressure, the Legislature enacted three measures between 1997 and 2001 to help speed up the processing of water right applications, especially those for water right transfers:

- **Water Conservancy Boards** – In 1997, the Legislature authorized the creation of local water conservancy boards to make recommendations to Ecology on water right transfer applications and to provide for local participation in water right decision-making. Ecology reviews board recommendations and may affirm, deny, or modify a board decision. Ecology must respond to a board recommendation within a set timeframe or the board decision goes into effect.
- **Cost-Reimbursement** – In 2000, the Legislature established a cost-reimbursement option to speed up the processing of both new and transfer applications that request water from the same source. Under this method, an applicant enters into an agreement with Ecology to pay the department's cost of hiring and overseeing an independent consultant to do the technical analyses required to evaluate not only the applicant's application, but all the applications for new water rights or transfers in line ahead of the applicant's application. Ecology reviews the consultant's work and makes the final decisions about the applications.
- **"Two-lines" legislation and increased funding** – In 2001, the Legislature expressly allowed Ecology to divide the single line of water right applications for a given water source into two separate lines, one line for new water rights and one line for water right transfers. The Legislature also provided Ecology with \$4.1 million in additional funding in the 2001-03 and 2003-05 Biennia to support the processing of transfer applications.

Ecology is implementing the "two-lines" legislation by moving into certain watersheds, processing to the extent possible all the transfer applications in those watersheds, then moving on to new watersheds.<sup>7</sup>

**So water conservancy boards are one of the "release valves" the Legislature has created to cope with the building pressure of the backlog of pending water right transfer applications.**

## Are The Release Valves Helping?

In short, yes, these methods are reducing the backlog of water right transfer applications, even as people continue to file additional transfer applications. For comparison with the numbers below,

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<sup>6</sup> As an example of an unresolved policy issue, a subject of debate for many years has been whether to allow additional withdrawals of water from the Columbia River for off-stream uses in light of concerns about endangered salmon runs. For more information on this topic, see <http://www.ecy.wa.gov/programs/wr/cr/crhome.html>.

<sup>7</sup> A watershed is made up of the land and the waterways that drain into the same body of water. WAC 173-500-040 divides the state into 62 watersheds called "water resource inventory areas."

between July 1998 and June 2001 (prior to the two-lines/funding release valve), Ecology issued decisions on 365 water right transfer applications, while an additional 105 transfer applications were withdrawn or cancelled.

- The **“two-lines” legislation and the additional funding** for Ecology has yielded the largest volume of the three “release valves.” From July 2001 through the first quarter of 2004, Ecology reports issuing decisions on 620 transfer applications. In addition, applicants have withdrawn or Ecology has cancelled 680 transfer applications. This brings the total number of transfer applications removed from the backlog under this approach to 1300 applications.<sup>8</sup>
- **Water conservancy boards** are second in terms of processing volume. Since the beginning of board operations in 1998 through the first quarter of 2004, boards have issued decisions on 265 water right transfer applications.
- Ecology processed about 80 applications using the **cost-reimbursement approach** as of March 2004. This is a mix of 50 new water right and 30 transfer applications.

Figure 3 shows the reductions in the backlog of transfer applications during the second quarter of 2004, using all three of the “release valves.” The backlog of transfer applications is down from 2000 to 1200 statewide.

Figure 3. Action on Water Right Transfer Applications, All 3 Methods – 2<sup>nd</sup> Qtr 2004

Action on the Transfer Application	Quantity of Transfer Applications, by Ecology Region and Statewide				
	Central	Eastern	Northwest	Southwest	Statewide
Transfer granted	29	31	6	35	101
Transfer denied	2	0	0	1	3
Transfer withdrawn or cancelled	16	7	29	10	62
<b>Total</b>	<b>47</b>	<b>38</b>	<b>35</b>	<b>46</b>	<b>166</b>
<b>Pending transfer applications</b>	<b>541</b>	<b>392</b>	<b>132</b>	<b>143</b>	<b>1208</b>

Source: Department of Ecology, reported on July 8, 2004.

The majority of the transfer application backlog is in the central part of the state, followed by the eastern region. In Western Washington, the state is moving closer to the point of being able to keep up with transfer applications as they come in. As discussed more in the next chapter, the workload of the local conservancy boards follows this pattern, with the most activity in the central part of the state, followed by the eastern region and then the west side.

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<sup>8</sup> The Department of Ecology produces quarterly reports on the total number of transfer applications processed. For JLARC’s Preliminary Report, the agency was not able to provide us with information on the exact number of applications processed by “release valve.” Ecology cites its recent efforts to move older data into a new tracking system as a factor in its inability to provide precise figures. We have rounded the numbers here and in Chapter 4 to reflect the lack of precision. Between the Preliminary and Final Reports, Ecology was able to provide JLARC with more specific data on applications processed by the cost-reimbursement method. We have updated the Final Report to reflect this revised data.

## ORGANIZATION OF THE REPORT

This background helps explain how water conservancy boards fit within the larger context of water right application processing. The remainder of the report is structured as follows:

- Chapter 2 provides detail on what water conservancy boards do;
- Chapter 3 describes the costs to support the work of the boards, from a local and a state perspective;
- Chapter 4 compares various aspects of the work of the boards with similar work conducted by the Department of Ecology;
- Chapter 5 raises two issues that emerged during the course of the study and offers two recommendations to address those issues.

# CHAPTER TWO – THE WORK OF THE WATER CONSERVANCY BOARDS

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Water conservancy boards perform four activities. Boards work on processing water right transfer applications. The boards also educate potential applicants and other members of the community about water law and water right transfer requirements. Boards may operate a water right transfer information exchange to connect parties who want to participate in water right transfers. Additionally, some boards use their work to voice an interpretation of state water law that is different from Ecology's.

## WATER CONSERVANCY BOARD PROCESSING OF TRANSFER APPLICATIONS

Water conservancy boards have issued 265 decisions on water right transfer applications since the boards began their work in 1998.<sup>9</sup> Ecology has approved all but 26 of these board recommendations in some form, so the boards have made a contribution in getting transfer applications processed. Figure 4 identifies the steps of the water conservancy board application review process; see the right hand column for detail on each step. **Appendix 3 of this report provides a profile of each individual board's work on processing transfer applications.**

One other aspect of the boards' work on processing applications should be mentioned. Ecology is implementing the "two-lines" legislation watershed by watershed. This means that Ecology may not return to process transfer applications in a given area for quite some time, perhaps years. If a board is operating in the area, an applicant retains the option of filing with the board and getting a timely decision on a transfer application even if Ecology has moved on to a different watershed.

## PUBLIC EDUCATION ROLE

Board members interviewed for this study emphasized the public education contribution boards make in their communities. Boards report that numerous potential applicants contact the boards, and the boards tell them about the transfer process and about the specific information that will be required of the applicant if the applicant chooses to file. The boards also report that many of these potential applicants choose *not* to file after they learn what information will be required of them and what the criteria are for transfer approval. Depending on the number of inquiries they receive, this may be a time-consuming activity for board members.

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<sup>9</sup> The "snapshot" of time used for this study begins with the inception of board activity and runs through the first quarter of 2004.

Figure 4. The Water Conservancy Board Application Review Process

**Someone chooses to apply to a local Water Conservancy Board for a water right transfer.**



**The Board chooses whether or not to accept the application.**



**The Board collects a fee from the applicant.**



**The Board is responsible to see that a public notice is published about the proposed transfer.**



**The Board is responsible for an analysis of whether and/or to what extent a transfer should be approved.**



**An applicant may withdraw an application or ask the Board to put processing on hold.**

About one-fourth of board applications came from Ecology's backlog; the remaining three-fourths were filed originally with the boards. The majority of boards have some sort of a pre-submission meeting with a potential applicant to explain the process and to advise the applicant on what information will be required. Boards report many potential applicants choose not to apply after this initial briefing; however, it is an important and potentially time-consuming part of board work.

Since their inception through the first quarter of 2004, boards have accepted 442 transfer applications for processing. It should be noted that boards do not have to accept an application. They report screening applications to make sure the applications are within the board's jurisdiction and have a high probability of making it all the way through the process.

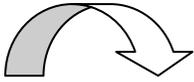
Boards set their own fees, which range from \$250 to \$1450 per application. The average board fee is \$595; the median board fee is \$600. For comparison, statute sets the fee to file an application with Ecology at \$10.

The purpose of the notice is to alert others who might want to protest or otherwise raise concerns about a proposed transfer. Of the 19 boards that have taken this step, 13 drafted their own public notices while five required the applicant to do the drafting. One board mixed the approaches. Ten boards paid for publication of the notice from the fee, while nine required the applicant to pay for this step in addition to the board fee. (For applications filed with Ecology, Ecology drafts the notice, and the applicant pays for publication.)

There is wide variation among boards in this step as to what analysis is conducted by board members vs. what boards require from an applicant or an applicant's consultant (see later section in Chapter 5). Boards may – but are not required to – ask for technical assistance from Ecology staff as they work on these analyses.

Applicants withdrew or asked for a hold on 73 applications (17% of those accepted). An applicant may have a variety of reasons for withdrawing an application, including a change of plans, a filing of an alternative application, or a switch to Ecology processing if Ecology is working in the area. An applicant may ask for a hold in light of changing plans or awaiting the resolution of technical or legal issues.





**The Board may get an application part way through the process and decide not to continue.**

Boards decided not to process 18 applications (4%). This could be because the board determined belatedly that it did not have jurisdiction or because the applicant did not provide certain information that the board requested.



**The Board makes a decision recommending to Ecology whether to approve or deny the proposed transfer.**

Since their inception through the first quarter of 2004, boards have made 265 decisions about transfer applications, approving 263 and denying two. It should be remembered that a board chooses which applications to accept and typically chooses those applications it thinks it will be able to approve. As of this “snapshot,” the boards are continuing work on 85 applications (19% of those accepted).



**The Board decision goes to Ecology for review (45 – 75 days).**

Ecology initially has 45 days to review board decisions but may take a 30-day extension of time. Ecology has taken the extension 100 times (38% of applications reviewed). During this review period, the board’s analysis about the transfer is posted on Ecology’s website for public review and comment. Ecology sometimes takes the extension to allow a board to withdraw its decision to make modifications. Boards have withdrawn decisions on 49 applications.



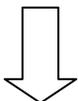
**If Ecology does not issue a decision within its allotted time, the Board decision becomes final.**

Ecology missed its deadline one time for two applications from one applicant. However, due to the timing of those decisions in relation to a Thurston County Superior Court decision about boards processing certain applications, the applicant withdrew the board-processed applications and asked Ecology to process its two applications instead, which the agency did.



**Ecology may affirm (leave just as it is), reverse, or modify a Board decision.**

In modifying a decision, Ecology may modify the board’s provisions about *the transfer* and/or about *other aspects of a board’s decision* such as the language about measuring water use or a project development schedule. See Chapter 3 for more on Ecology review of board decisions.

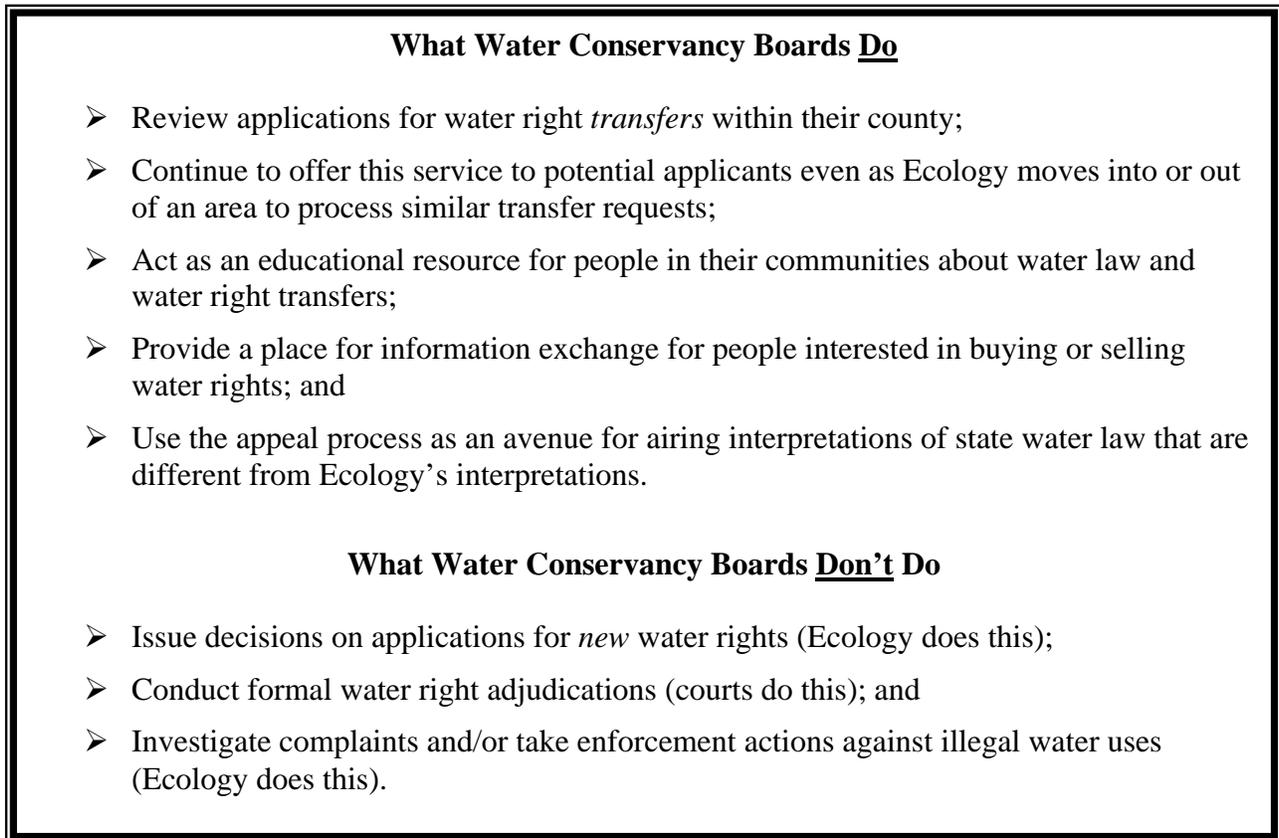


**The Ecology decision may be appealed.**

Parties have filed appeals on 47 Ecology decisions about board-processed applications (about 18% of Ecology reviews of board decisions). Thirty-eight of these appeals were to the Pollution Control Hearings Board; eight were to Yakima County Superior Court in connection with an ongoing adjudication process.

In addition, board members in some areas report receiving calls seeking general information about water rights and water law from people in the community, including people who might not feel comfortable asking the same questions of a state agency. Boards educate people in their communities about what is and what is not within a board's jurisdiction, for example, explaining that a board may not accept an application for a new water right (Figure 5 provides a brief summary of what boards do and do not do). Board members also help people identify ways to address a water-related issue other than with a water right transfer. These public education activities are in addition to the boards' work on processing water right transfer applications.

Figure 5.



## WATER RIGHT TRANSFER INFORMATION EXCHANGE

State law allows water conservancy boards to establish systems that help people exchange information about potential water right transfers.<sup>10</sup> Boards can post information from parties who want to sell or lease all or part of a water right and from parties who want to buy or lease water rights. Currently, the Benton and Walla Walla Boards offer this service. The Thurston and Franklin Boards are considering offering this service in the future.

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<sup>10</sup> RCW 90.80.055.

## AN AVENUE FOR ALTERNATIVE INTERPRETATIONS OF WATER LAW

One step in the application process is Ecology’s review of board decisions. Ecology’s review may be challenged through an appeal, by applicants or other parties. Most of these appeals go first to the state’s Pollution Control Hearings Board, though some go to the Yakima County Superior Court as part of an ongoing water rights adjudication process.

Some water conservancy board members have different interpretations of state water law than those of the Department of Ecology. Putting these alternative interpretations into board recommendations and then challenging Ecology’s review of that interpretation is one way to air these differences during the appeal process. For example, an appeal of what was originally a Benton County Water Conservancy Board recommendation to approve a transfer is now pending in the State District Court of Appeals, having already been reviewed by the Pollution Control Hearings Board and the Benton County Superior Court.<sup>11</sup> At the time of the study “snapshot,” no board other than the Benton Board has actually participated as a party opposing Ecology in an appeal of an Ecology decision on a board recommendation.

## STAFF SUPPORT FOR THE WORK OF THE BOARDS

Fifteen of the 21 water conservancy boards have some sort of staff assistance, ranging from taking meeting minutes to handling a board’s correspondence to assisting with the drafting of the official public notice and the analyses regarding the transfer.<sup>12</sup> Of the 15, six contract with a private party or parties for assistance (Benton, Douglas, Grant, Kittitas, Klickitat, and Yakima). Four boards contract with their county conservation district or local U.S. Department of Agriculture office (Adams, Franklin, Lewis, and Mason), and the Chelan Board contracts with the county’s Natural Resource Program. The Walla Walla and Whitman Boards each receive some assistance from clerks in the county commission offices, while the Island Board has access to a county hydrology expert. The Whatcom Board contracts for staff support with the Northwest Regional Council, an association of the county governments of Island, San Juan, Skagit, and Whatcom Counties. Several board members noted the contribution their staff support makes towards the efficient operation of the boards.

Each board profile in **Appendix 3** includes a brief description of that board’s staff support. Boards that contract for staff support pay for this support using the money they collect in applicant fees and other public support dollars. Chapter 3 details how boards are funded.

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<sup>11</sup> The debate is over a proposal to transfer use of water from an undeveloped permit to use groundwater that was conditioned under the Family Farm Water Act to a city to use for municipal water supply.

<sup>12</sup> At the time of this “snapshot” the Ferry, Lincoln, Okanogan, Spokane, Stevens, and Thurston Boards did not have staff assistance, though the Thurston Board has since contracted with someone for administrative assistance.



# CHAPTER THREE – SUPPORTING THE WORK OF THE WATER CONSERVANCY BOARDS

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This chapter provides information about the resources used to support the work of the local water conservancy boards. The first part of the chapter describes the fees the boards charge applicants and the other support the boards receive at the local level. The second part of the chapter looks at what it costs the state to support the work of the boards. These state costs are the costs Ecology incurs for training board members, providing them with technical assistance, and reviewing board decisions.

## LOCAL AND APPLICANT SUPPORT

Boards receive funds or other support at the local level from four sources: (1) board members' time; (2) fees the boards charge applicants; (3) local (primarily county) financial or other support; and (4) donated use of space for board meetings:

- **Board member time** – Conservancy board members volunteer their time to accomplish the work of the boards. There is wide variation in the time required, depending on the volume and complexity of applications a board accepts, and the amount of administrative work board members handle directly or delegate to staff. Another factor is the degree to which board members themselves generate the analyses supporting transfer recommendations vs. their review of analyses conducted by applicants or applicants' consultants. The number of hours a board member invests may range from four hours per month to over 40 hours per month if a member is working on a difficult application.
- **Board fees** – Each water conservancy board sets a fee that it charges applicants to accept and process a transfer application. State law does not establish parameters for board fees. Current fees range from \$250 to \$1450, with an average of about \$600. Some boards charge an applicant an additional publication fee. One of the early steps after a board accepts an application is publication of a public notice in a local newspaper. Nine of the 21 boards require the applicant to pay to publish this notice in addition to the board fee. Publication costs range from less than \$100 in some Eastern Washington counties to more than \$400 in parts of Western Washington.<sup>13</sup>
- **Local government assistance** – Some boards received grants or donations from a local government (usually the county) to help offset their start-up costs, and some boards are receiving ongoing support in their local jurisdiction. Other boards receive no financial support at the local level beyond what they receive from charging fees.
- **Donated use of meeting space** – All water conservancy boards have made arrangements to use meeting space at no charge. Eighteen of the boards are using public space such as the county commissioners' meeting room or the conference room at their local conservation district. Three of the boards use a meeting room at a private business; the business has a connection with a current or former board member.

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<sup>13</sup> For comparison purposes, statute directs Ecology to charge a \$10 application fee, and Ecology has the applicant pay for publication of the public notice; filing with a board is generally more expensive for an applicant than filing directly with Ecology.

Figure 6 summarizes information on local support for boards through board fees, local government financial support, and donated use of meeting space. The Lewis Board received \$700 in private funds at start-up, and the Benton Board reports that third parties have paid for some legal services for the board.<sup>14</sup> Boards report that they receive no other major direct support for their operations beyond these means.

## STATE COSTS TO SUPPORT THE WORK OF THE WATER CONSERVANCY BOARDS

The Department of Ecology provides support for the 21 water conservancy boards as the boards process water right transfer applications. Ecology provides board members with their initial and ongoing training; provides requested technical assistance to boards as they evaluate transfer requests; and reviews board decisions. Ecology does not charge boards for these services, which cost the agency about \$507,500 for the 2001-03 Biennium and required the efforts of 2.6 fulltime equivalents in staff time. Ecology reports that this expenditure was allocated as follows:

- 15 percent for training board members (\$76,125);
- 45 percent for providing technical assistance to the boards (\$228,375); and
- 40 percent for reviewing board decisions (\$203,000).

### Training Board Members

State law directs Ecology to provide training for all water conservancy board members.<sup>15</sup> All new board members must attend a 32-hour training session that presents an overview of state water law and hydrology, as well as materials on the Open Public Meetings Act and the Public Records Act. This training is now typically offered twice a year – less frequently than when boards were first authorized. When boards were first being created, all board members were new, and the boards needed assistance in getting started and in learning about specific needs and issues in their counties. As boards have become more established, it is more likely now that a new board member will be joining an already-operating board.

After completing the initial training, board members must fulfill eight hours of continuing education each year to remain eligible to vote on transfer application decisions. Board members can fulfill this requirement by attending annual trainings offered by Ecology or by attending other seminars or classes relevant to their work. Ecology has offered statewide board training sessions such as additional training on the Open Public Meetings Act and the Public Records Act. More recently, Ecology has offered regionally-based 8-hour training sessions, one on the west side of the state, one in the central region, and one in the eastern region. These sessions addressed agenda topics requested by the board members in that region. Ecology also has provided training sessions for individual boards that needed specific training in order to be able to move forward with their application processing.

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<sup>14</sup> In an October 2004 status report, the Benton Board indicates it has received donations of legal services and legal support from the Benton Rural Electric Association, the City of West Richland, the Columbia-Snake River Irrigators Association, and individual water right holders. The Benton Board also reports that some attorneys working with the Board have donated their time.

<sup>15</sup> RCW 90.80.040.

Water Conservancy Boards Review

Figure 6. Local and Applicant Support of Water Conservancy Boards

Board	Board Fee	Public Financial/Other Support	Donated Use of a Meeting Place
Adams	\$500 plus publication cost	\$5000/yr from County; \$2000/yr from Big Bend Electric Co-op	Conservation District conference room
Benton	\$250	One-time grants of \$6000 from County and \$1500 from Benton Rural Electric Association	Conference room at private office of a board member
Chelan	\$1000 deposit; board charges direct expenses plus 25% surcharge against deposit	County manages Board's financial matters at no charge	County Planning Department hearing room
Douglas	\$600 plus publication cost	None	Waterville City Hall
Ferry	\$250	County reimbursed for some travel expenses for training	Conservation District meeting room
Franklin	\$650 for up to two related applications	None	Conservation District/USDA Ag Service Center conference room
Grant	\$500 plus publication cost	County donated a computer	Small building/meeting room of a private company – belongs to employer of a former board member
Island	\$750 plus publication cost	Use of county hydrologist's time; county donated file cabinet and \$1500 for board insurance	County Commission hearing room, Oak Harbor City Hall, or Coupeville City Hall
Kittitas	\$600 plus publication cost	County reimbursement for travel expenses for initial training	County Commission meeting room
Klickitat	\$500	County provides \$10,000 – \$12,000/yr	County Commission meeting room
Lewis	\$500	County provided a \$1500 start-up grant	Meeting room at local USDA office
Lincoln	\$500 plus publication cost	County provided one-time grants totaling \$4600 and also manages Board finances	County Commission meeting room
Mason	\$800	County provided a \$5000 start-up grant	Conservation District meeting room
Okanogan	\$600	County provided a one-time grant of \$5000	County Commissioners' conference room
Spokane	\$500 plus publication cost	None	Meeting room at local utility company
Stevens	\$500	Two start-up donations from the County	Conservation District meeting room
Thurston	\$1450	None	Meeting room at private office of a board member
Walla Walla	\$500	County allows use of some time by a clerk for Board work	County Commission hearing room
Whatcom	\$750 plus publication cost	County provides \$6000/yr (\$7500 the first year)	Northwest Regional Council meeting room
Whitman	\$600	County allows use of some time by a clerk for Board work	County Commission meeting room
Yakima	\$600 plus publication cost	County provides \$5000/yr	Conference room of City of Yakima's Public Works building

## Providing Boards with Technical Support and Decision Review

State law also requires Ecology to assign a representative to provide technical assistance to each of the boards and to review each conservancy board decision.<sup>16</sup> Ecology has assigned staff from the water resources program in each of its four regional offices to accomplish these two tasks. The four offices organized their staff differently to provide technical support and review of board decisions:

- **Central Region** – This region has by far the largest number of board decisions. One employee is the primary point of contact for the seven boards in the region. He responds to technical questions from boards, and he reviews the boards' decisions.
- **Eastern Region** – This region has the second highest number of board decisions. Three employees are involved in providing direct support to the nine boards in this region. One employee works in Walla Walla, and he provides technical assistance and reviews decisions for the Walla Walla Board. For the remaining eight boards, one employee in the Spokane office is assigned as the first point of contact with the boards. She helps monitor that the boards are following the appropriate administrative processes. A second employee in the Spokane office is the contact for boards' technical questions, and he reviews the decisions from the eight boards.
- **Northwest Region** – This region has the smallest volume of board decision-making; the two boards in this region have issued a total of four decisions. One employee in the region provides technical assistance and reviews decisions for the Whatcom Board, while a second employee does the same for the Island Board.
- **Southwest Region** – This region is third in terms of the number of board decisions. Two employees directly assist the three boards in this region. One person serves as the initial contact and handles board questions primarily concerning administrative procedures. A second employee is the primary contact for board technical questions. Unlike the other regions, he does not review the boards' decisions. Instead he assigns other employees in the region's water resources program to review board decisions.

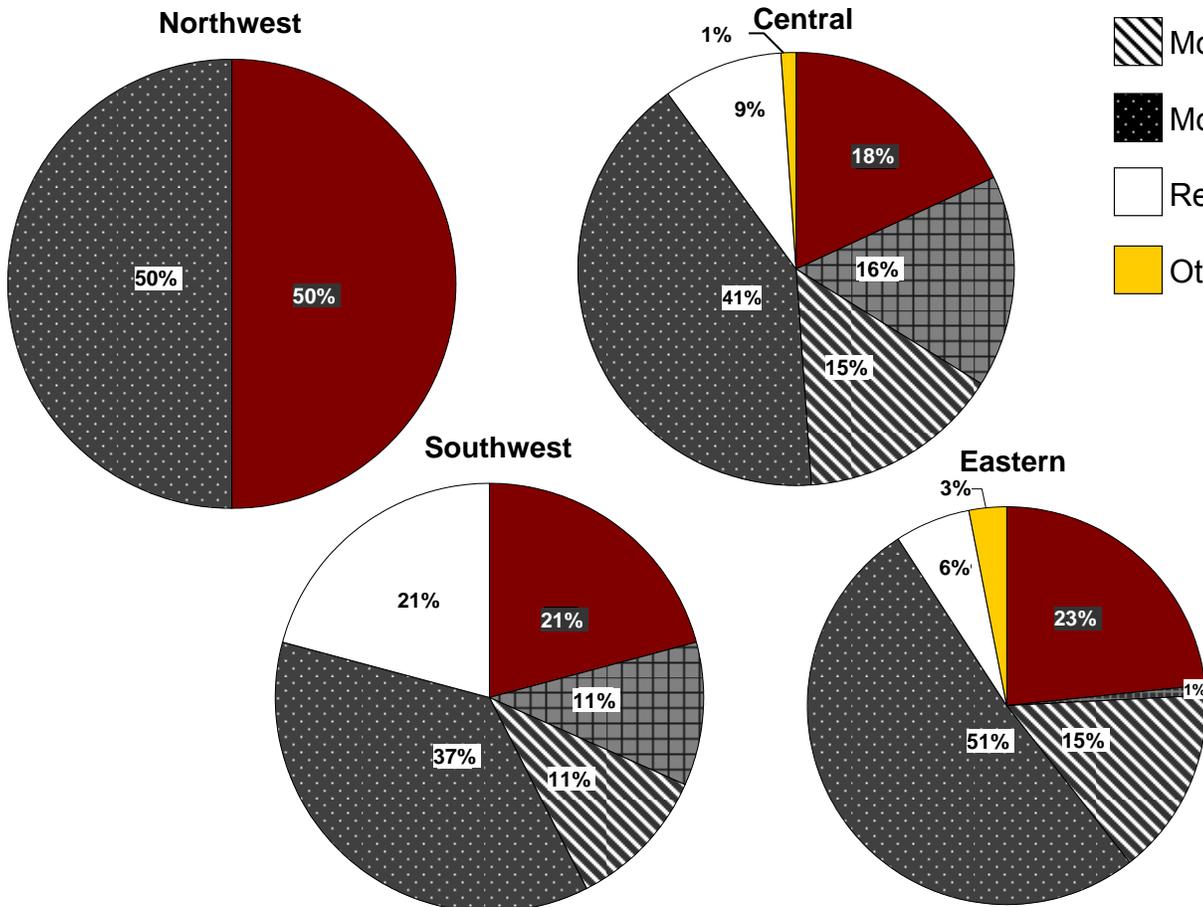
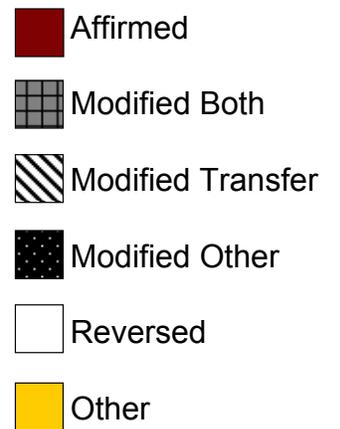
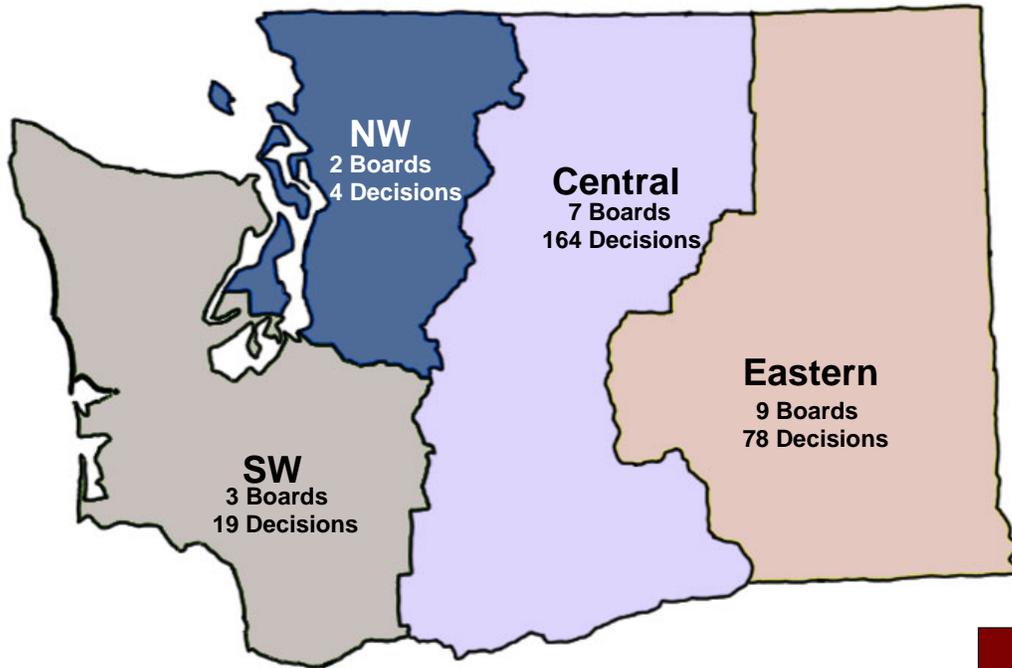
When these regional Ecology employees are not working with boards, they process water right applications filed directly with Ecology.

Ecology's workload in the four regions for board technical assistance and decision review is directly related to the volume of transfer applications processed by the boards in that region. As Figure 7 on the following page shows, the seven boards in the central region issued more decisions on transfer applications than the boards in the other three regions combined. As a result, the Ecology staff person in the central region devotes nearly two-thirds of his time working on matters concerning the conservancy boards in that region. In comparison, the two employees in the northwest region estimate that they spend less than 10 percent of their time working with the respective boards they support.

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<sup>16</sup> RCW 90.80.055 and 90.80.080, respectively.

Figure 7. Number of Water Conservancy Boards and Board Decisions, by Ecology Region, with Results of Ecology Review (1998 - 1st Qtr 2004)



Ecology's workload *per application* is in part a function of how well a board has done its job.<sup>17</sup> The four pie charts in Figure 7 display the results of the Ecology reviews of board decisions, by region. In our interviews with regional Ecology staff who do these reviews, staff reported that the different decisions depicted in the pie charts often require different amounts of staff time. Decisions that Ecology either affirmed or reversed were described as often the least time-consuming; the board decision was either correct and complete or, for some of the reversals, had some clear error that precluded the need to do further review.

The more time-consuming reviews for Ecology staff involved modifications to board recommendations. These required Ecology staff to add additional language and sometimes do additional analysis themselves in order to ultimately approve some version of the transfer. The pie charts distinguish between the number of applications (a) where Ecology made some modification to the board's analysis about the transfer, (b) where Ecology agreed with the board's analysis of the transfer but modified other aspects of the board decision such as the language about measuring water use or a construction schedule, and (c) where Ecology modified both the transfer and other aspects of the board decision. As the patterned pieces in Figure 7 show, Ecology modifies most board decisions.

## Statewide Coordinator for Water Conservancy Boards

In addition to the regional board support Ecology staff provide, Ecology has a statewide coordinator for the 21 water conservancy boards. The coordinator serves as a liaison between Ecology and the local boards, and she keeps the boards informed of legislative developments and Ecology policy changes. She tracks completion of board member initial and continuing training, and she monitors board member eligibility in terms of compliance with their training requirements. She is responsible for developing and maintaining guidance and standardized procedures for Ecology staff who work with boards. Her tasks also include attending board meetings, organizing Ecology-sponsored trainings, and responding to board members' non-technical questions and concerns as they arise. Ecology included the costs for the statewide coordinator in its estimates for board training and technical assistance.

**Financial analysis of the water conservancy boards** — At the time this study was initiated, JLARC staff learned that the State Auditor's Office was conducting the first *financial analysis* of the water conservancy boards. The original schedule for this analysis would have allowed inclusion of any findings in this report. However, there was an unforeseen delay in the boards' receipt of the information request from the State Auditor, so the information on the results from this analysis is not available as originally planned. The State Auditor's Office has agreed to prepare a summary for JLARC on the outcome of this analysis — the first financial analysis of the boards — once the information is available.

## AN ADDITIONAL STATE COST: APPEALS

The decision that Ecology issues on a water right transfer application originally filed with a board may be appealed, in the same manner as if the application had been filed with Ecology.

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<sup>17</sup> Ecology workload on a particular application can be related to other factors as well; for example, an application may involve a new or an unresolved policy issue.

Ecology and the Office of the Attorney General incur costs in addressing these appeals. It should be noted that a party does not file an appeal of a board decision; a party appeals the decision Ecology issues after Ecology has reviewed a board decision.

Of the 265 board decisions, parties have appealed the results of Ecology's review on 47 applications (18 percent).

- Applicants filed the largest number of appeals (40 of the 47). Six appeals were filed by third-party interests and one, by the party to receive the transferred water.
- Twenty-nine of the appeals resulted in settlement agreements with Ecology. For 10 applications, the Ecology decision was upheld or the case was dismissed.
- At the time of this "snapshot," eight appeals are pending.<sup>18</sup>

Five of the appeals by third parties dealt to some degree with the subject of board jurisdiction, a subject unique to board decisions. We cannot know whether the remainder of the Ecology decisions on these applications would have been appealed if the applicant had filed directly with Ecology rather than with a water conservancy board. However, we can report that a higher percentage of these decisions were appealed (18 percent) compared to the percentage of appeals of decisions for applications filed directly with Ecology (7 – 8 percent).<sup>19</sup>

## SUPPORTING THE WORK OF THE WATER CONSERVANCY BOARDS

At the local level, water conservancy boards are supported by the donated use of board member time, by the fees that the boards charge applicants, and by the donated use of meeting space. Some boards have also received initial or ongoing financial support from local governments, primarily from their respective county government.

At the state level, Ecology carries the cost to train board members, provide technical assistance to the boards, and review board decisions. Ecology estimates an expenditure of approximately \$507,500 for these purposes in the 2001-03 Biennium. Chapter 4 includes a comparison of these costs with the costs of processing applications filed with Ecology.

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<sup>18</sup> Five first-round appeals are before the Pollution Control Hearings Board, and one is before the Yakima County Superior Court. One second-round appeal is before the Grant County Superior Court, and one-third-round appeal is in the State District Court of Appeals.

<sup>19</sup> Ecology's data show appeals for an estimated 75 of 1015 decisions on applications filed with Ecology, including the 30 transfer applications processed using the cost-reimbursement method.



# CHAPTER FOUR – WATER CONSERVANCY BOARD COMPARISONS WITH ECOLOGY

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In 21 counties in the state, applicants have two options for filing a water right transfer application: Ecology or a water conservancy board. JLARC’s analysis of these two options indicates that:

- Processing an application through a conservancy board **costs the state about half as much** as processing an application filed directly with Ecology;
- **Ecology addressed over six times as many applications** as boards between July 1998 and the first quarter of 2004;
- Conservancy boards offer applicants the likelihood of receiving a **faster decision**;
- Both boards and Ecology serve **similar proportions of categories of applicants**;
- **The public has a greater opportunity to participate in review of water right transfer applications filed with boards** than applications filed with Ecology; and
- The percent of applications where the final decision reduces the quantity of water from what the applicant requested is the same regardless of whether the applicant filed with a board or with Ecology. Using either option, **the requested quantity of water was reduced for about one-third of approved applications.**

Each of these comparisons is discussed in more detail below.

## COMPARATIVE COSTS TO THE STATE

**Processing a water right transfer application filed with a water conservancy board costs the state less** than processing an application filed directly with Ecology. This conclusion is based on a comparison of Ecology expenditure estimates for the 2001-03 Biennium. Ecology estimates that the cost to process an application with a board decision ranges between **\$3100 and \$3600**. This estimate includes costs associated with board training, technical assistance, and decision review. It should be noted that this estimate of cost per application does not include some Ecology costs of assigning tracking numbers and establishing files for newly-accepted board applications; the calculation is made using the number of board applications processed to the point of decision during the 2001-03 Biennium.<sup>20</sup>

In comparison, Ecology estimates that it costs the state **\$6000 to \$7000** to process an application filed directly with the department to the point of decision, including costs related to appeals of those decisions.<sup>21</sup>

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<sup>20</sup> The boards issued 161 decisions during the biennium, 144 of which were through the Ecology review process at the end of the period. This is divided into Ecology’s cost estimate of \$507,500 for the biennium.

<sup>21</sup> In calculating this figure, Ecology divided its biennial water right processing and legal costs (\$7,905,000) by the total number of applications it addressed during the biennium (a range of 1148 – 1294), including application withdrawals and cancellations. The estimate also includes Ecology’s issuing decisions on some applications for new water rights.

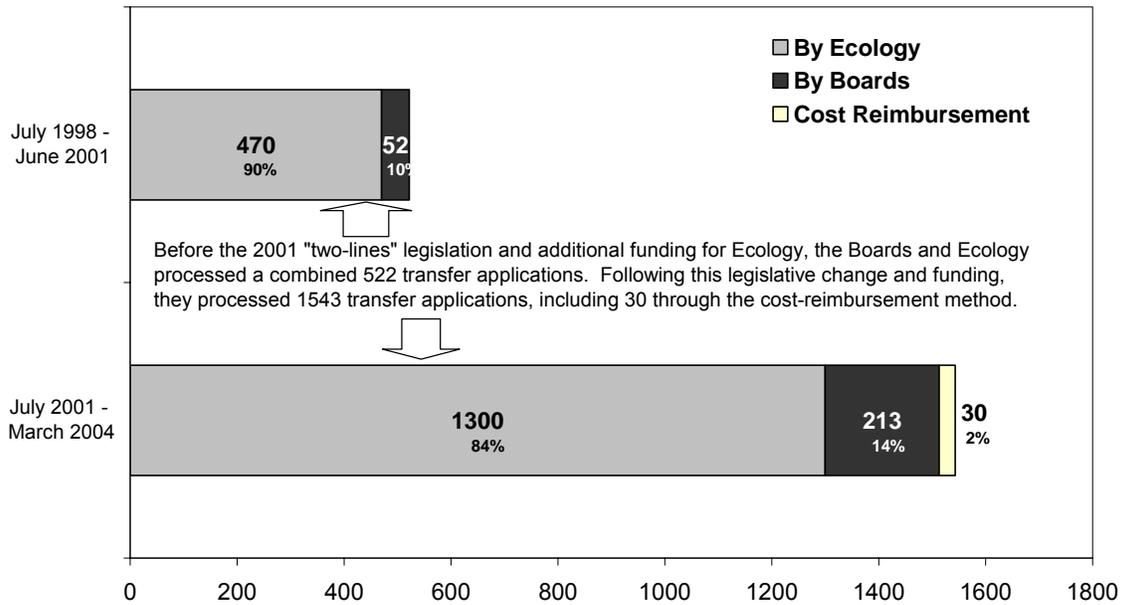
The largest component of this state cost is the salaries and benefits of the Ecology staff working on water right application processing. Chapter 5 discusses the different costs for **applicants** among the water conservancy boards, depending on how the boards choose to conduct business.

## VOLUME OF APPLICATIONS

While it is less expensive to the state to process water right transfers through conservancy boards, **Ecology staff continue to perform the overwhelming majority of the work.** Since they began work in 1998, boards have processed 265 transfer applications. For the comparable time period, Ecology addressed 1770 transfer applications.<sup>22</sup> Ecology also worked with contractors to process 30 transfer applications through the cost-reimbursement method.

As illustrated in Figure 8, Ecology’s production increased significantly following the passage of the 2001 “two-lines” legislation and the receipt of additional funding. The number of board decisions increased over time as counties created more boards, the most recent being the Mason Board in 2002.

Figure 8. Volume of Water Right Transfer Processing By Water Conservancy Boards and Ecology



This comparison of total volume does not address the issue of *the complexity* of applications processed under these two options. Unlike Ecology, boards may screen out the more complex applications by choosing not to accept them for processing. However, our review of board decisions confirms that some boards have chosen to work on complicated transfer proposals.

<sup>22</sup> This estimate includes Ecology’s decisions on 985 transfer applications as well as 785 applications that applicants withdrew or Ecology cancelled, removing them from the queue.

## SPEED OF PROCESSING

**Water conservancy boards currently offer applicants a faster decision on a transfer application.** Based on the transfer applications Ecology processed between 1998 and the first quarter of 2004, applicants waited an average of four years.<sup>23</sup> The median time for an Ecology decision was two years, 11 months. This figure is based on several hundred applications that were originally filed several years before 1998 – in some cases, as long as 20 years ago. Because of Ecology’s strategy of implementing the 2001 legislation by working from watershed to watershed, it is likely that many applicants who filed with Ecology prior to 1998 will continue to have lengthy delays in receiving decisions on their applications, depending on their location.

In contrast, the average time for a decision going through a water conservancy board is slightly less than a year (343 days), with a median decision time of about eight and a half months.<sup>24</sup> At least three factors contribute to this speedier turn-around time. First, boards control the total number of applications waiting in their lines. Second, boards are able to screen the applications they choose to accept. Some board members interviewed indicated that, if an application involved contested legal issues or was likely to be protested, the board would instead refer the applicant to Ecology. A third factor is the mandatory 45-day clock that begins to tick once a board submits a decision to Ecology for review.

In comparing the speed of processing between the Ecology and board options, it is important to remember that an applicant filing with a board can continue to get a timely decision regardless of whether Ecology is currently processing applications in the applicant’s watershed. **Until the backlog is reduced substantially, an “apples to apples” comparison cannot be made between the speed of Ecology and board processing.** However, it is the presence of the backlog and the opportunity for a speedier decision that prompted the creation of the boards in the first place.

## WHO APPLIES TO WATER CONSERVANCY BOARDS AND TO ECOLOGY?

Figure 9 displays the categories of applicants applying to Ecology and to water conservancy boards.<sup>25</sup> The **proportion of applicants in the various categories is similar** between the two options. The most notable difference is a greater percentage of businesses choosing to apply through the boards, while a greater percentage of individuals or couples apply to Ecology. This difference may be explained in part by the time-sensitivity of business projects. For a business, it may be worth – and a business may have the wherewithal to pay – the extra cost associated with filing an application with a board, the trade-off being the faster decision time.

While Figure 9 shows categories of applicants for the boards as a whole, there is great variation in the mix from county to county. For example, the majority of applications in Klickitat and Lewis counties are from local governments. The board profiles in **Appendix 3** provide information about the applicant mix for each board.

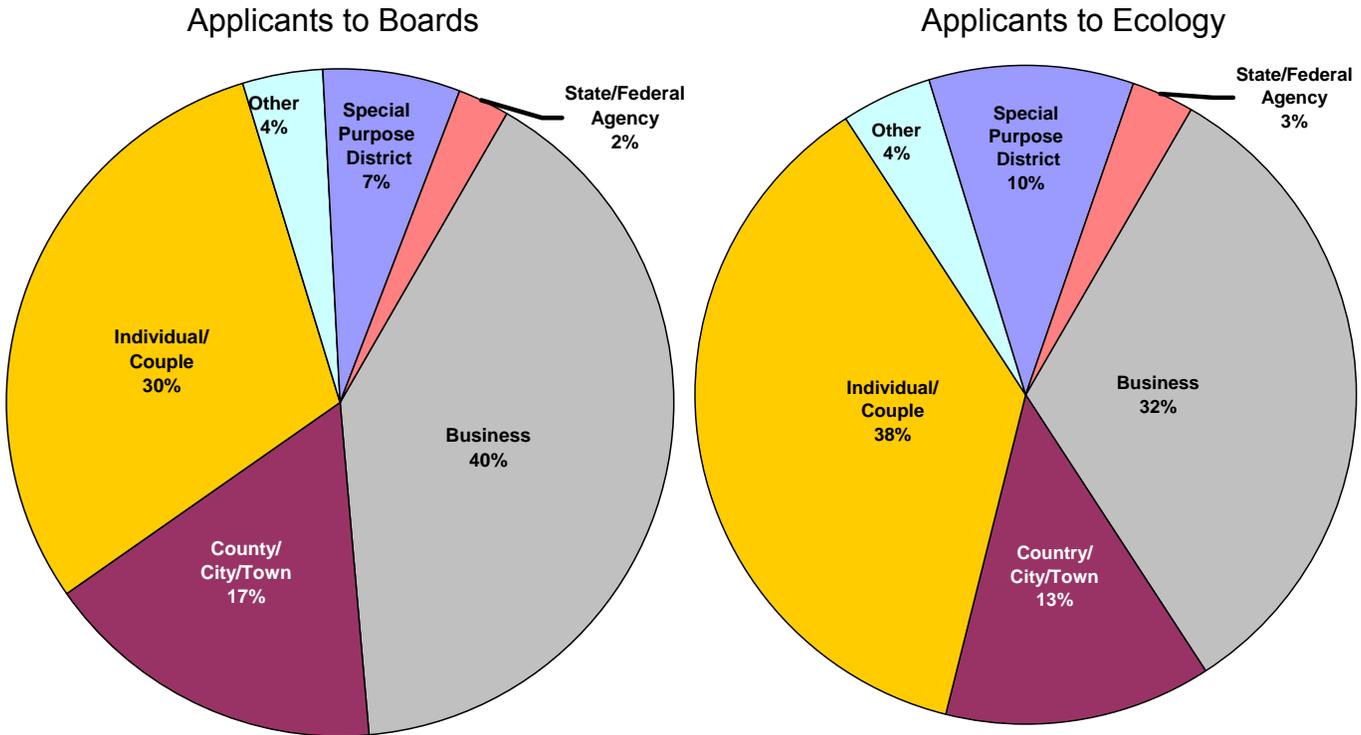
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<sup>23</sup> This calculation about Ecology includes a range of decision times, from some applications that Ecology processed in fewer than 50 days to at least three applications where the applicant waited 20 or more years for a decision.

<sup>24</sup> This calculation about the boards includes five applications that took over three years to decide and 10 that received decisions in fewer than 100 days. See Appendix 3 for information about decision time for each board.

<sup>25</sup> The Ecology group includes 30 transfer applications filed with Ecology but processed using the cost-reimbursement method.

Figure 9. Categories of Water Right Transfer Applicants to Water Conservancy Boards and to Ecology, 1998 – 1<sup>st</sup> Qtr 2004



## PUBLIC PARTICIPATION PROCEDURES

JLARC’s study mandate specifically requests a comparison of the public participation procedures of the water conservancy boards as compared to Ecology. The Legislature has ensured that **the public does have an opportunity to participate in and review board decision-making, more so than under the Ecology process.**

The conservancy boards operate under the Open Public Meetings Act,<sup>26</sup> which prohibits a quorum of board members from discussing board business outside of an advertised meeting. Boards must provide public notice of the time and place where a board will discuss a proposed transfer, and interested members of the public may attend the meeting.

Like Ecology, a board must publish or direct the applicant to publish a legal notice in a newspaper of general circulation, to run once a week for two consecutive weeks in the area where the proposed transfer is to occur. This notice provides interested parties in the area with the opportunity to protest or otherwise comment on the proposed transfer. In addition, as a result of 2001 legislation, Ecology posts the board’s decision and the analysis supporting that decision on Ecology’s Internet site after the board has submitted the decision to Ecology for review. The decision is posted for a 30-day comment period during Ecology’s 45-day review period, which allows for much wider exposure and potential comment on board transfer decisions.

<sup>26</sup> Chapter 42.30 RCW.

In contrast, public participation is more limited when applicants file with Ecology. An Ecology staff person evaluates the application, perhaps discussing the proposal with the applicant and Ecology colleagues. There is the same public notice requirement as for board applicants. However, there are typically no public meetings to attend, and the Ecology decisions and analyses are not posted on the Internet for more general public review and comment.

## WATER QUANTITY REDUCTIONS FROM TRANSFER DECISIONS

During the project interviews, some board members expressed a concern that applicants *must* give some quantity of water back to the public domain in order to get Ecology to approve a water right transfer. At issue is the analysis of how much water is available to transfer and whether the applicant has lost the use of any water because of western water law's "use it or lost it" provision (see Figure 1). Some board members also expressed the concern that applications filed with boards received a different – perhaps more rigorous – assessment of this factor than applications filed with Ecology.

We were able to look into this concern. For applications filed with the boards, we compared the quantity of water requested by the applicant with the quantity approved by the board. Then we compared the quantity the board approved with the quantity Ecology approved after reviewing the board decision. To make a comparison with Ecology, at our request Ecology pulled a random sample of approved transfer applications processed by Ecology in the same time period as the board decisions.<sup>27</sup>

In the sample of the applications filed with Ecology, Ecology reduced the water quantity from what the applicant requested for 68 of 198 applications (34 percent). For the board decisions, either the board or Ecology reduced water quantity from what the applicant requested for 34 percent of the applications (80 of 237 approved applications).<sup>28</sup> The breakdown with regard to the applications filed with the boards is as follows:

- The boards lowered the water quantity from what the applicant requested in 60 of the 237 approved applications;
- Where the board did not recommend a reduction, Ecology reduced water quantity from what the applicant requested for an additional 20 applications;
- For the 60 approved applications where a board recommended reducing water quantity, Ecology made a further reduction in water quantity as compared to the board decision for 21 applications.

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<sup>27</sup> Ecology pulled a random sample of 198 approved applications, about 20 percent of approvals. The sample reflects the proportional number of applications processed in each region and includes two applications processed by Ecology using the cost-reimbursement method. Ecology staff reviewed these files, comparing the quantity of water in the Ecology decision result with the quantity of water the applicant requested on the application.

<sup>28</sup> Since their inception, boards have issued 265 decisions. Of these, 263 were transfer approvals. Of these, Ecology reversed 24, and one applicant withdrew two applications after the board decision but before the Ecology decision. This leaves a total of 237 board transfer approvals that Ecology has approved in some form.

The percentage of applications where the final decision reduced the amount of water from what the applicant requested was the same (34 percent) regardless of whether the applicant filed with a board or with Ecology. **In either case, the result is a quantity reduction in about a third of approved applications** – a much lower proportion than what board members feared.

## AN UNKNOWN: APPLICANTS' FUTURE USE OF THE BOARDS

As the comparisons in this chapter indicate, water conservancy boards currently offer water right transfer applicants a quicker decision on their applications than Ecology offers. The trade-off is, in part, one of time versus money, and some applicants are willing to bear the extra expense associated with filing with a local board in order to get the faster decision. Boards also note that applicants are benefiting from being able to deal with someone in their community rather than with a large state agency.

However, as discussed in Chapter 1, the state is making progress in trimming down the water right transfer backlog, with the greatest volume derived from the work Ecology conducted under the “two-lines” legislation and the increased funding. While there are still several hundred applications waiting in line in Central and Eastern Washington where boards are most active, the number of pending applications in Western Washington now stands at less than 300. If the state continues to make progress at the current rate, applicants may be able to get a decision when filing with Ecology in the same timeframe as filing with a local board, but at a lower cost to the applicant.

When the situation in the state reaches this stage, **will applicants continue to choose to file with the boards?** We don't know the answer to this question, though we will learn more about this in Western Washington in the near future. It is a question on the minds of many board members as well. At the time of this study's “snapshot,” eight of the boards had no applications before them.

# CHAPTER FIVE – REMAINING ISSUES AND RECOMMENDATIONS

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The primary purpose of this study is to provide the Legislature with information about the state's 21 water conservancy boards – why our state has these local boards, what the boards do, how their work is supported, and how their work fits into the larger context of processing water right transfers. These topics are covered in Chapters 1 – 4 of this report.

In the course of conducting this study, however, two issues have emerged that merit additional discussion as part of this report. The first issue is board concerns about the consistency of Ecology in its examination of water right transfer proposals across the state. The second issue is the disparity among the different water conservancy boards as to what analyses the board members conduct themselves versus what they require from their applicants or their applicants' consultants. The first part of this chapter discusses these two topics in more detail, then the chapter ends with a pair of recommendations to address these two issues.

## ISSUE #1: CONSISTENCY IN ECOLOGY DECISION-MAKING ON TRANSFER APPLICATIONS

During the interviews for this project, board members raised concerns about perceived inconsistencies among the different Ecology regions when it comes to reviewing water right transfer proposals (**Appendix 4** identifies other issues, concerns, and ideas board members raised during the interviews). They report receiving different advice and interpretations of statute from Ecology staff within a region as staff assignments for board technical support changed. They also report receiving different information from Ecology staff during initial and other statewide training than what they hear from Ecology staff in their home regions. Several board members perceive a major difference in the treatment of board recommendations across the different regions. We contacted a small number of consultants who regularly represent applicants before boards, and they too indicated that there are inconsistencies in interpretation among the regions.

This issue of consistency has two aspects. The first aspect of consistency is with regard to **the response of Ecology regional staff after their review of board decisions**. For example, staff in each region might review a board decision and reach the same conclusion that the information included in the analysis is inadequate to support approving the proposed transfer. However, one region might then reverse the board decision or suggest the board withdraw it, while another region might do the necessary additional analysis and make substantive changes to the board decision in order to be able to approve a modified version of it.

To its credit, the **Department of Ecology is taking steps to address this first aspect of consistency**. During the course of this study, Ecology assembled a staff guidance document for assisting water conservancy boards and reviewing the board decision documents. The guidance document took effect September 1, 2004, and the effort ahead will be on consistent implementation of that guidance by the Ecology staff who work with the boards.

The second aspect of consistency is in the **consistent interpretation of state statutes, rules, and policies**. These should apply in the same way to all applicants for a water right transfer, regardless of whether an applicant applies to Ecology or to a particular water conservancy board. Examples include how to establish the extent and validity of an existing water right and how to calculate and then factor into a decision the amount of water returning to a source after the water has been used.

We have no specific documentation regarding this second aspect of inconsistency. However, in discussing this matter with Ecology staff, we have learned that variation in interpretation of laws and policies across the regions is certainly possible. New Ecology staff who evaluate applications for water right transfers do not receive any kind of centralized training on how to do this task. Instead, **Ecology reports that new staff tend to learn how to do their jobs in their respective regional offices through the verbal transfer of information and through mentoring**. Ecology does have an Internal Policy Team comprised of staff from headquarters and the regional offices whose role includes trying to instill policy and procedural consistency in water rights processing across the state. Regional staff report, though, that there may be long lags between the time when policy clarity is needed (for example, when a new law passes) and the time the policy team produces its statewide guidance.<sup>29</sup>

Ecology is a large and geographically-dispersed organization, so it is not surprising that there would be some regional differences in operations. However, an applicant should receive a consistent review on both the technical and legal merits of a water right transfer application, regardless of whether the application was filed with Ecology or a with water conservancy board, and regardless of where in the state the application was filed. This report will recommend that Ecology design a test to determine to what extent, if any, this inconsistency in reviews occurs. If the test reveals that this is a problem, the agency will need to take steps to correct it.

## ISSUE #2: WHO CONDUCTS THE ANALYSIS TO SUPPORT A BOARD DECISION?

A second issue to bring to the attention of the Legislature and to the boards themselves and their sponsoring county commissions is the disparity among the boards in terms of what analyses board members conduct themselves versus what they assign to the applicant or to the applicant's consultant.

As explained earlier, boards must consider a number of factors in evaluating a transfer application. Factors include an analysis of how much water is legally available to transfer (including an assessment of possible quantity reductions under western water law's "use it or lose it" provision) and a check to see if the proposed transfer will impair other water rights. Depending on the complexity of the proposal, additional technical assessments may be required.

Figure 10 describes a continuum among the boards in terms of who conducts these analyses.<sup>30</sup> At one end of the continuum, applicants to the Benton, Grant, Okanogan and Spokane boards find that board members themselves usually conduct the required assessments. At the other end of the continuum, the Kittitas and Yakima boards require the applicant to conduct all the

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<sup>29</sup> For example, board members and regional staff noted that there is not yet any statewide policy guidance on implementation of a 2003 bill on municipal water rights.

<sup>30</sup> Excluded are the six boards that have issued two or fewer decisions (Ferry, Island, Mason, Stevens, Whatcom, and Whitman). Together these boards account for seven board decisions.

necessary assessments and submit a draft decision document for the board to review. Since most applicants are not sufficiently well versed in state water law and Ecology policy to do this work themselves, this board requirement essentially means the applicant must hire a consultant to do this work. At one end of the continuum, the board members are generating the analysis to support their transfer decision. At the other end of the continuum, the board is acting primarily as a reviewer of someone else's analysis. Other boards fall somewhere in between.<sup>31</sup> The workload and time commitment per decision for individual board members varies according to where the board chooses to be on this continuum. **No single approach is leading to the quickest decision-making for the boards.**<sup>32</sup>

The disparity among boards is also apparent from the perspective of the applicant. The applicant at one end of the continuum is paying the board fee and perhaps the fee for publication of the public notice. The applicant is also providing the board with documentation of use of the water. After this, the applicant's contribution may be complete. At the other end of the continuum, the applicant is paying the board fee and the publication fee, but then the applicant must either learn how to do the required analyses or hire a consultant. In an informal poll of some of the consultants who frequently provide this service to board applicants, consultant costs ranged from a few thousand dollars for a simple transfer application to between \$20,000 and \$50,000 for something more complex. **A board's choice about who conducts the required analyses may make the option of filing for a transfer with a local board unaffordable for some potential applicants.**

A third perspective to consider is the impact of this board choice on Ecology review. The bottom portion of Figure 10 shows the results from Ecology review for each group of boards. For the group where the board members are researching and writing their own assessments, Ecology needed to take the extra 30 days of decision-making time for 11 of 74 applications (15 percent).<sup>33</sup> **Ecology affirmed (approved with no modifications) 20 of the 74 decisions in Group 1 (27 percent).** This rather high percentage may be due in part to these board members holding direct discussions with Ecology staff about technical or legal issues in the applications, with three of the four boards frequently asking Ecology to review a draft decision document.

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<sup>31</sup> Boards may also make choices to change where they are on the continuum. For example, the Walla Walla Board reports that it initially conducted the analyses and drafted the decision documents for applications filed with the board but is now shifting to having the applicant's consultant do more of this work.

<sup>32</sup> Other factors beside a board's approach to conducting the required analyses will also influence how long it takes a board to reach a decision on an application. For example, a board may hold an application pending the resolution of larger legal or technical issues. Institutional factors (e.g., Columbia Basin Project) and hydrogeological conditions differ across the state, making applications more complicated to evaluate in some parts of the state as compared to other areas. However, as the Franklin Board notes, a board's choice may affect the time it takes a board to complete work on an application: "The length of time required to process an application is mainly dependent on the applicant. As opposed to the process Ecology uses, (i.e., they typically do their own technical reports) the Franklin Board places the burden of moving the process forward on the applicant (i.e., we require the applicant to provide a technical report). If the applicant does not provide the Board with the required information then the transfer process stalls" (Franklin Board letter to JLARC September 13, 2004).

<sup>33</sup> Other factors clearly influence whether Ecology will need to take the additional 30 days of review time, such as the total number of applications that come in for Ecology review at the same time.

Water Conservancy Boards Review

Figure 10. A “Continuum” of Water Conservancy Board Choices About Who Does the Analysis to Support a Board Decision<sup>34</sup>

<b>Group 1</b> Board does the analysis.			<b>Group 2</b> Board or applicant's representative does the analysis (Board has done at least half of the analysis).			<b>Group 3</b> Applicant's representative usually does the analysis, but Board has done some of the analysis itself.			<b>Group 4</b> Board requires applicant to submit a “technical report;” Board staff has helped some applicants assemble technical information.			<b>Group 5</b> Board requires the applicant or the applicant's representative to do the analysis and submit it to the Board for review.		
Board	# of Board decisions	Avg # days to Board decision	Board	# of Board decisions	Avg # days to Board decision	Board	# of Board decisions	Avg # days to Board decision	Board	# of Board decisions	Avg # days to Board decision	Board	# of Board decisions	Avg # days to Board decision
Benton	39	281	Klickitat	20	127	Adams	11	886	Franklin	18	349	Kittitas	27	181
Grant	25	519	Lewis	6	187	Chelan	24	226				Yakima	34	221
Okanogan	6	112	Lincoln	5	399	Douglas	14	160						
Spokane	4	315	Thurston	13	280									
			Walla Walla	12	300									
Total Group 1	74		Total Group 2	56		Total Group 3	49		Total Group 4	18		Total Group 5	61	

Ecology Review of Board Decisions, By Group

<b>Group 1</b>			<b>Group 2</b>			<b>Group 3</b>			<b>Group 4</b>			<b>Group 5</b>		
Ecology took extra 30 days 11 times (15%) Boards withdrew 12 times (15%)			Ecology took extra 30 days 17 times (30%) Boards withdrew 11 times (20%)			Ecology took extra 30 days 40 times (82%) Boards withdrew 18 times (37%)			Ecology took extra 30 days 3 times (17%) Board withdrew 3 times (17%)			Ecology took extra 30 days 27 times (44%) Boards withdrew 4 times (7%)		
Outcome	#	%	Outcome	#	%	Outcome	#	%	Outcome	#	%	Outcome	#	%
Affirmed	20	27%	Affirmed	17	30%	Affirmed	8	16%	Affirmed	5	28%	Affirmed	1	2%
Modified Transfer	7	9%	Modified Transfer	8	14%	Modified Transfer	15	31%	Modified Transfer	2	11%	Modified Transfer	6	10%
Modified Other Aspects	33	45%	Modified Other Aspects	18	32%	Modified Other Aspects	22	45%	Modified Other Aspects	8	44%	Modified Other Aspects	32	53%
Modified Both	7	9%	Modified Both	5	9%	Modified Both	4	8%	Modified Both	0	0%	Modified Both	13	21%
Reversed	5	7%	Reversed	4	7%	Reversed	0	0%	Reversed	3	17%	Reversed	7	11%
Other	2	3%	Other-Rev	4	7%	Other	0	0%	Other	0	0%	Other	2	3%

<sup>34</sup> Excludes the six boards that have issued two or fewer decisions (Ferry, Island, Mason, Stevens, Whatcom, and Whitman). Together these boards account for seven board decisions.

At the other end of the continuum, for the boards in the fifth group that require the applicant or his consultant to conduct the required analyses, Ecology needed to take the extra 30 days of review time for 27 of 61 applications (44 percent). **Ecology affirmed only one board decision in Group 5.** These two boards typically do not ask Ecology to review decision drafts, though an applicant's consultant might make this request. So a board's choice to actively engage Ecology staff on technical and legal issues during the course of investigating a transfer proposal may reduce Ecology's need to take extra time for the official decision review. That approach may also lead to the resolution of issues affecting Ecology's review prior to a board's formal submission of its decision. For those boards that opt to do the required analyses for some portion of the applications, this direct work may improve their skills at reviewing the work of others.<sup>35</sup>

State statutes do not identify any criteria to use to assess whether one board approach is "better" than another along this continuum. The water conservancy board members serve as volunteers, and they are making choices about how much of the necessary analysis they want to take upon themselves. Their choices have a direct impact on the amount and the type of work they do. The board choice may have an impact on the time it takes Ecology to review board decisions and on the resolution of legal or technical issues prior to a board's official submitting of a decision for review.

**Board choices clearly have an impact on applicants in terms of applicant workload and cost.** Rather than try to advocate for a particular choice, the recommendation below is intended to ensure that the Legislature, all the boards, and their respective county commissioners are aware of the range of choices the boards are making.

## RECOMMENDATIONS

**Recommendation 1. The Department of Ecology should design and implement a test for possible inconsistencies in interpretation of laws, rules, and policies among the regions in the review of water right transfer applications. If the results of the test indicate a problem, the agency should take steps to correct these inconsistencies.**

<b>Legislation Required:</b>	<b>None</b>
<b>Fiscal Impact:</b>	<b>Minimal to conduct the test. If the test reveals a problem, there may be costs associated with a solution.</b>
<b>Reporting Date:</b>	<b>As noted below.</b>

Such a test might include some centralized review of decisions from the regions or some cross-regional review of decisions on transfer applications, including applications filed with boards. Ecology should consult with water conservancy board members for specific issue areas where board members have concerns about regional inconsistencies. Ecology may also want to ask for examples from the consultants who regularly represent applicants before several different water conservancy boards.

If the results of the test indicate that there are inconsistencies among the regions, Ecology will need to take steps to correct the problem. Possible options here include centralized training for Ecology staff who review water right applications, creation of a manual of standard operating

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<sup>35</sup> In the interviews, board members reported that their skills in conducting the required analysis improved with practice.

procedures for all staff to use, and formal adoption of statewide procedures and interpretations in rules.

Ecology should report to JLARC on the design of its test by February 2005. By July 2005, Ecology should report to JLARC on the results of its test and its plan to address any problems identified by the test.

**Recommendation 2. The Department of Ecology should sponsor, as one of its board continuing education opportunities, a session on the subject of the wide disparity among boards as to who conducts the analyses to support board decisions. Ecology should invite county commissioners to participate.**

<b>Legislation Required:</b>	<b>None</b>
<b>Fiscal Impact:</b>	<b>Minimal</b>
<b>Reporting Date:</b>	<b>As part of the regular board training cycle.</b>

Interviews with board members indicate there is infrequent communication among boards outside of these statewide training sessions, so it is possible that board members are not aware that they hold such disparate views on this topic. County commissioners may not be aware of the differences, particularly with regard to the effects the different approaches have on the workload and costs to water right transfer applicants. It may be that each board maintains its current approach after the continuing education session. However, each board and its respective county commissioners would do so in full awareness of where that board falls along the continuum of board choices about who conducts the analysis to support board decisions.

## AGENCY RESPONSES

We have shared the report with the Department of Ecology, the Office of Financial Management, and each of the 21 water conservancy boards. The written comments we received are included as Appendix 2; Appendix 2A is JLARC's response to one of those comments.

## ACKNOWLEDGEMENTS

We would like to thank the water conservancy board members and staff who spent time sharing their views with us during the interviews, who filled in missing pieces of data about their board's application processing, and who reviewed drafts of the board profiles now in Appendix 3. The board members are volunteers, and they took time out of their busy schedules to participate in the interview process for this study, and we appreciate their doing so.

We also would like to thank staff in the headquarters and regional offices of the Department of Ecology for their assistance with this project. We especially thank the regional staff who identified, located, and pulled the official water right files for every transfer application accepted by the state's water conservancy boards and who answered our many questions as we worked our way through those files. We acknowledge their patience and good humor as we completed that extensive data collection effort.

Cindi Yates, Legislative Auditor

On December 1, 2004, this report was approved for distribution by the Joint Legislative Audit and Review Committee.

Senator Jim Horn, Chair

# APPENDIX 1 – SCOPE AND OBJECTIVES

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## Review of Water Conservancy Boards

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### SCOPE AND OBJECTIVES

JUNE 2004

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STATE OF WASHINGTON

JOINT LEGISLATIVE AUDIT  
AND REVIEW COMMITTEE

#### STUDY TEAM

LINDA BYERS  
ERIC THOMAS

*Research Analysts*

#### LEGISLATIVE AUDITOR

CINDI YATES

Joint Legislative Audit & Review  
Committee

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## WHAT IS A WATER CONSERVANCY BOARD?

A water conservancy board is a unit of local government with authority to make recommendations to the state Department of Ecology regarding **water right transfers and changes**. A water right holder might apply for such a transfer to change where water is used or what it is used for. Applicants have a choice to file their applications with Ecology or with a water conservancy board if a board operates in their county. Ecology reviews board decisions and may affirm, reverse, or modify a board's recommendation.

A county legislative authority may create a water conservancy board (subject to approval by Ecology) via its own resolution or in response to a request by others. Counties then appoint board commissioners to serve staggered, six-year terms. Board commissioners serve in this role as volunteers.

## EVOLUTION OF THE BOARDS

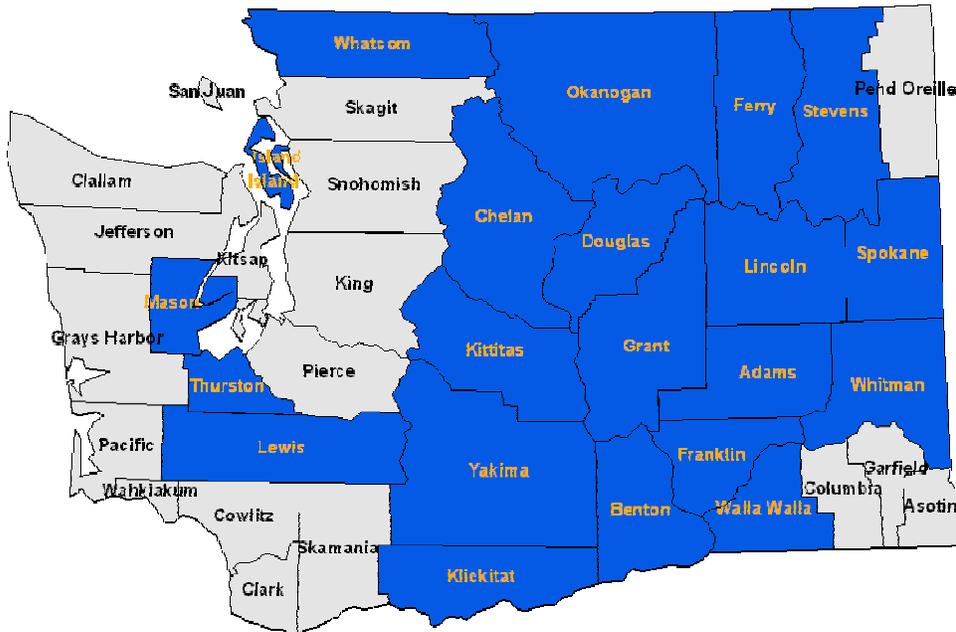
The Legislature authorized the creation of local water conservancy boards in 1997 to help expedite water transfers.<sup>36</sup> Benton and Lewis Counties created the first two boards in 1998. Ten boards followed in 1999. Currently, 21 water conservancy boards operate in Washington, the most recent addition being the Mason County board in September 2002 (see the map on the reverse side).

The boards' authorizing environment has evolved at the same time that the number of boards has grown. The two earliest boards operated under a pilot rule until Ecology adopted a permanent rule in late 1999. In 2000, a Thurston County Superior Court judge ruled that, under the 1997 law, boards could only act on certain types of change applications. The Legislature revisited the board statutes in 2001, making many changes including a clarification that boards may act on applications for all the same types of water right changes as Ecology.<sup>37</sup> The Legislature made minor changes to the water conservancy board statutes in 2004.

## THE JLARC STUDY MANDATE

State law requires Ecology and the Office of Financial Management to report to the Legislature about the boards. However, the Legislature itself has not yet taken an in-depth look at these units of local government that it authorized in 1997. In the 2002 operating budget,<sup>38</sup> the Legislature directed JLARC to conduct this first legislative review of the water conservancy boards.

**Counties With Water Conservancy Boards As Of June 2004  
(Shaded Counties Have Boards)**



**PROPOSED STUDY SCOPE AND OBJECTIVES**

Consistent with the legislative mandate, JLARC will conduct a review of water conservancy boards. This review will include answers to the following questions about the boards:

- What do the water conservancy boards do?
- What does this work cost the boards?
- What resources do the boards use to pay these expenses?
- What does it cost the Department of Ecology to support the work of the boards?
- How do the volume, speed, and cost of board decisions compare to the volume, speed, and cost of Ecology decisions on water right change applications?
- How do the public participation procedures for the boards compare with those of Ecology for these water right decisions?

**Timeframe for the Study**

This study will be completed by December 2004.

**JLARC Staff Contacts for the Study**

Linda Byers

(360) 786-5183

byers\_li@leg.wa.gov

Eric Thomas

(360) 786-5298

[thomas\\_er@leg.wa.gov](mailto:thomas_er@leg.wa.gov)

## APPENDIX 2 – AGENCY RESPONSES

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- Department of Ecology
- Office of Financial Management
- Benton County Water Conservancy Board





STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY  
P.O. Box 47600 • Olympia, Washington 98504-7600  
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

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November 8, 2004

To: Cindi Yates, Linda Byers, Eric Thomas  
Joint Legislative Audit Review Committee

Copies: Linda Hoffman, Marty Brown, Bob Nichols, Ann-Marie Sweeten

From: Joe Stohr, Water Resources Program Manager *JS*

Subject: Response to Joint Legislative Audit Review Committee Conservancy Board  
Review, Preliminary Report

Thank you for the opportunity to respond to the Joint Legislative Audit Review Committee Conservancy Board Review, Preliminary Report dated October 20, 2004. The report is both thoughtful and extensive. It adds to our understanding of Conservancy Board operations and their contribution toward processing water rights as well as Ecology's role.

Following is our response to the two report recommendations in the format that you requested:

Recommendation	Agency Position	Comments
1. Implement a test for inconsistencies in reviewing water right transfer applications and follow-up with a plan if test indicates problem	Partially concur	We believe there are useful consistency improvements that should be implemented and propose to move directly to developing a follow-up plan and not pursue the intermediate test phase.
2. Sponsor a board continuing education session on the wide disparity among boards as to who conducts analyses to support board decisions	Concur	We will conduct the session with boards and invite County Commissioners as recommended.

Also attached are additional comments related to the recommendations and other subjects of the report that I hope will be helpful to the work of the Committee.

Please contact me if you have further questions.

attachment



## **Additional Comments on Water Conservancy Boards Review**

### Recommendation 1: Inconsistency

*The Department of Ecology should design and implement a test for inconsistencies in interpretation of laws, rules, and policies in the review of water right transfer applications. If the results of the test indicate a problem, the agency should take steps to correct these inconsistencies. Ecology should report to JLARC on the design of the test by February 2005; Ecology should report to JLARC on the outcome of the test and a plan to address any identified inconsistencies by July 2005.*

#### Response:

We share the interest in achieving greater consistency and have been taking specific steps in that direction as noted in the Review on page 27. It may be more efficient and effective to proceed more directly with implementing additional consistency measures. We propose to develop the plan and report to JLARC before July rather than first designing and reporting on a consistency test and then reporting on a plan by July 2005 to address any identified inconsistencies. In the Interim, we would continue our current efforts towards consistency improvements including staff training and developing a number of Internal Policy Team Products (schedule attached).

I would like to add one note of context. There are limitations on how far we can go on our own to achieve consistency. Individual water rights applications often have unique fact patterns and water law is often complex, ambiguous and based heavily on evolving case law. The lack of stakeholder agreement on direction to bring greater clarity to water rights issues limit our ability to develop and institute sound and necessary administrative consistency tools. These include such routine and customary program administration tools as policies, guidelines, interpretations, etc. I would also note that while some types of inconsistency are problematic, other types of inconsistency allow flexibility to improve administration and service.

### Recommendation 2: Consultant Roles

*The Department of Ecology should sponsor, as one of its board continuing education opportunities, a session on the subject of the wide disparity among boards as to who conducts the analyses to support board decisions. Ecology should invite county commissioners to participate.*

We will conduct the recommended session regarding board disparity as to who conducts the analyses to support decisions. The disparity is somewhat similar to that of Ecology processing of water rights directly or using cost reimbursement contracting, an alternative provided in law. The recommended session would help raise awareness of the range of approaches as to who conducts the analyses to support board decisions and their relative advantages and disadvantages. It is not clear what results or follow-up would be necessary by boards or Ecology.

## Comparing Boards with Ecology in Processing Water Transfer Applications:

### Additional Comments on Selected Items

*Processing an application through a board costs **the state** about half as much as processing an application filed directly with Ecology (\$3,600 vs. \$7,000).*

- We agree. This is consistent with our estimates in a previous report to the legislature on water rights processing. The primary reason for the lower cost to the state is that board members are unpaid and Ecology staff is paid.
- As the review notes, while cost to the state is lower the cost to applicants is higher, especially if a consultant is required by a board to submit a draft decision document for the board to review with a cost ranging from a few thousand dollars for a simple transfer application to between \$20,000 and \$50,000.
- The question of lowering the application processing costs of the state by having applicants pay some of the costs is now being examined by the legislatively created Water Resources Program Funding and Administration Task Force.

*On average boards offer applicants a faster decision compared to filing directly with Ecology (slightly less than a year vs. Ecology's four years).*

- We agree. Ecology gives processing priority to reviewing board "RODs" in order to respond within the statutory time frames. Ecology is working on a longstanding inventory of pending change applications that have been in line longer. Once the backlog is worked down, processing time should be dramatically reduced.
- As noted in the Review, Ecology is required to accept applications for processing (no control over service demand) and boards have the option of limiting the number of applications and screening out difficult ones (control over service demand). Also, the ability to set application fees likely serves to limit board service demand.

*The public has greater opportunity to review decisions on transfer applications that boards process as compared to applications processed by Ecology.*

- We agree. We support greater transparency for water rights decision making and favor posting draft decisions for comment on the internet as now required by law for boards. When we proposed to do so in the past, we experienced some stakeholder opposition. Consequently, we may have to develop a rule before proceeding and rule development raises a workload priority and cost issue. Alternatively, the legislature could require us to do so directly absent rules.

## Other

Policy Lag, Page 28: *Regional staff report, though, that there may be long lags between the time when policy clarity is needed and (for example when a new law passes) and the time the policy team produces its statewide guidance. This is further footnoted: For example, board members and regional staff noted that there is not yet any statewide policy guidance on implementation of a 2003 bill on municipal water rights.*

- We agree. There is not only a policy lag but also a guidance, and interpretation lag on water rights topics. As noted previously, under the consistency recommendation, this is driven by water law complexity, evolving case law with new court rulings and lack of stakeholder agreement to allow us to move expeditiously on needed consistency tools. Also factoring in are resource constraints in that we have to balance meeting water rights processing production goals with staff time to support internal policy development.
- Regarding municipal law, we moved quickly with the Department of Health and stakeholders on an initial policy implementation tool (matrix). We recognize there is much more to do given the contents of the law and that new questions emerge over time as a new law is implemented.

Attachment

**IPT Workplan 2004-05**

<b>Priority</b>	<b>Policy Need</b>	<b>Status</b>	<b>Lead Drafters</b>
1	Tentative Determination of Water Right	Signed. Effective 8/30/04	
2	Annual Consumptive Quantity (ACQ)	Signed. Effective 7/12/04	
3	Supplemental Water Rights	Final draft being circulated for internal review	Jill and Herm
4	Surface to Groundwater Transfers	Draft completed. To be discussed at 9/22/04 meeting.	Jill
5	Same Body of Public Groundwater	Initial IPT/HG meeting held. To be discussed at 9/22/04 meeting.	Dan
6	Enlargement	Existing AG guidance. Issue needs further framing.	TBD
7	Reservoir Permits	Issues need to be framed up.	Guy
8	Water Duty / Quantity Allocation	Unsigned POL/PRO 1070 needs to be updated.	Dan and Jacque
9	Policy 1200 - Water Right Transfers	Update existing policy for Sullivan Creek and old age.	Dan
10	Fire Flow / Water Rights Policy	Update/collate numerous drafts	Jacque
11	Policy 1110 - Water Reuse	Update existing policy, coordinate with Reuse Workgroup	Jill and Dan

**Other Policy Issues with Potential 2004-05 Workload Implications**

Muni Bill Implementation
Seawater water rights Policy
Mitigation Policy
Illegal Dams and Water Rights
Relinquishment
Fees for Dam Safety Review
WRTS Coding
Preliminary, Temporary Permit Policy



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OFFICE OF FINANCIAL MANAGEMENT

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November 9, 2004

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JLARC

**TO:** Cindi Yates  
Joint Legislative Audit Review Committee

**FROM:** Marty Brown, Director *MB*

**SUBJECT: RESPONSE TO JOINT LEGISLATIVE AUDIT REVIEW COMMITTEE  
CONSERVANCY BOARD REVIEW, PRELIMINARY REPORT**

Thank you for the opportunity to respond to the Joint Legislative Audit Review Committee's preliminary report on the Water Conservancy Board Review dated October 20, 2004.

In response to the two report recommendations:

Recommendation	Agency Position	Comments
1. Implement a test for inconsistencies in reviewing water right transfer applications and follow-up with a plan if test indicates problem.	Partially Concur	Ecology is proposing to go one step further than this recommendation and move toward directly developing a follow-up plan and not pursuing this intermediate test phase. We agree with Ecology's efficiency proposal.
2. Sponsor a board continuing education session on the wide disparity among boards as to who conducts analyses to support board decisions.	Concur	

If you have further questions, please contact Ann-Marie Sweeten of my staff at 902-0538.

cc: Linda Byers, Joint Legislative Audit Review Committee  
Eric Thomas, Joint Legislative Audit Review Committee  
Jim Cahill, Office of Financial Management  
Bob Nichols, Office of Financial Management  
Ann-Marie Sweeten, Office of Financial Management



***Benton County Water Conservancy Board  
Status Report—October 2004***

**Transmittal:** E-Mail/FAX

**DATE:** October 27, 2004

**TO:** Reps. Bruce Chandler, Dan Newhouse, and Mark Schoesler  
Sens. Jerome Delvin, Jim Honeyford, Mike Hewitt, and Bob  
Morton

Ms. Janet Carlson, WADOE, Spokane Office  
Ms. Linda Byers, JLARC, Olympia, WA

Board of Benton County Commissioners

**FROM:** Darryll Olsen, Ph.D.  
Chairman, Benton County Water Conservancy Board  
509-783-1623, FAX 509-735-3140

**SUBJECT:** 2004 Status Report For Benton County Water Conservancy  
Board (Water Board)

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The following information provides a status report on the activities of the Benton County Water Conservancy Board (Water Board) for operations commencing in the fall of 1998 through October 2004. This information is provided to the WADOE to meet its reporting requirements to the Washington State legislature and to inform the Benton County Commissioners.

Also provided are brief observations and recommendations to the JLARC, per request for comments on the 2004 Water Conservancy Board Review.

**RESPONSE TO AND RECOMMENDATIONS ON THE  
JLARC WATER CONSERVANCY BOARDS REVIEW, 2004**

**Response to JLARC Staff Recommendations:**

**Recommendation 1.** The BCWCB partially concurs with this recommendation, although we do not recommend a “test.”

We note that the JLARC staff does have documentation already in hand concerning inconsistencies and/or different interpretations surrounding the water code and policy affecting changes/transfers. Detailed correspondence and legal opinions surrounding this issue(s) were provided to the JLARC staff by the BCWCB during the audit review.

The BCWCB suggests that time and effort would be better spent by holding a full-day workshop with WADOE staff, conservancy board members and legal counsel, and AG office staff, to identify and review their perception of inconsistencies and differences of interpretation.

**Recommendation 2.** The BCWCB does not concur with this recommendation. It is not clear what problem the JLARC staff are addressing here, or whether the staff firmly grasp the range of the review process for different change/transfer applications.

This recommendation appears to be off-point, relative to the fact that the “disparity” (of who does the technical analysis) affecting the conservancy board’s review also exists within WADOE reviews. Depending on the complexity of the change/transfer, it is common for applicants to hire consultants to prepare information or draft ROE’s for both WADOE staff or conservancy board reviews. In some cases, the WADOE requires the applicant to submit consultant/attorney reports for review.

The recommendation does not appear to be adequately informed (?).

**BCWCB Recommendations to JLARC:**

The BCWCB notes that several recommendations made to the JLARC staff were not included in the staff report, relative to key improvements for conservancy board and WADOE operations.

We restate some of the key recommendations:

- Existing WADOE Regional Office review of water conservancy board decisions should be eliminated. A separate WADOE unit, not the regional offices, should be responsible for technical assistance to and decision review for the conservancy boards. Under the current model,

the regional office staff are placed in a “contested” relationship with the conservancy boards.

- Where conservancy boards are in place, the main focus of WADOE regional office staff should be directed toward the processing of 1) new water right applications; 2) water right applications submitted for the water right trust program; and 3) technical analyses defining where new water rights can be issued without creating measurable impairment problems.
- Many of the contentious issues arising during water right changes/transfers involve relinquishment of all or part of a water right. The existing relinquishment statutes should be reformed. Legislators should ask the conservancy boards for recommendations on reform changes.

The BCWCB also notes that several operational measures conducted by the Board, relevant to the audit and reported by the Board to the staff, were not noted within the staff report. These operational features differ from WADOE practices and operations, and offer benefits to the water right change/transfer applicants.

# APPENDIX 2A – JLARC’S COMMENTS ON BENTON BOARD RESPONSE

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We offer the following comments to clarify the JLARC recommendations and to clear up a possible misperception a reader may have from reading the Benton Board’s commentary with regard to Recommendation 2.

## Regarding Recommendation 1

The Benton Board response indicates that the Board provided JLARC staff with documentation concerning inconsistencies and different interpretations of the water code and transfer policies. That response also suggests a workshop with Ecology and board members to identify and review these inconsistencies and differences of interpretation.

The Benton Board did provide us with materials that illustrate some of its differing interpretations of water law. The Board did not provide us with documentation showing inconsistencies among the Ecology regions.

We want to be clear that it is not the intention of Recommendation 1 to provide another forum for Ecology and the Benton Board to argue their alternative interpretations of water law. Instead, the purpose of Recommendation 1 is to assess Ecology’s *internal* consistency in interpretation of water law and policy, with the overall goal of ensuring that an applicant for a water right transfer receives a consistent review from Ecology, regardless of where in the state the applicant filed and regardless of whether the applicant filed directly with Ecology or with a water conservancy board.

## Regarding Recommendation 2

The second JLARC recommendation is for Ecology to sponsor a continuing education session on the wide disparity among the boards as to who conducts the analyses to support board decisions. The Benton Board response indicates that it is not clear to the Board what problem the JLARC staff are addressing here. Let us clarify. The purpose of Recommendation 2 is to shed light on this disparity, for the benefit of the boards, their respective county commissioners, and applicants. The disparity is a “problem” only if these parties are concerned about the effects of this disparity, for example, if they are bothered that a board’s choice of how to do business means that some people can’t afford to file an application with their local board.

We fear a reader may receive a misperception from the Benton Board’s statement that “this recommendation appears to be off-point, relative to the fact that the ‘disparity’ (of who does the technical analysis) affecting the conservancy board’s review also exists within WADOE [Ecology] reviews.” This statement is inaccurate. Again, we clarify:

Both the boards and Ecology require applicants to provide the information needed to make a decision about a water transfer. Some applicants who file directly with Ecology do, indeed, hire attorneys or other consultants who provide information and draft language that they hope Ecology staff will use in making the transfer decision; in essence, they are lobbying Ecology on behalf of their client’s application. However, Ecology staff are responsible for analyzing the

information and drafting the Report of Examination. Ecology does not require an applicant to do the analyses and write up the decision document, as some boards do.<sup>39</sup>

## Benton Board Recommendations to JLARC

In its response, the Benton Board indicated that several recommendations made to JLARC staff were not included in the report. The suggestions from the Benton Board are included in both the preliminary and final versions of the report. They are in Appendix 4, along with the comments and suggestions of other board members we interviewed. We encourage interested legislators to take a look at Appendix 4 to get a sense of the range of views among the different boards.

One additional recommendation listed in the Benton Board response is for Ecology to focus its regional office staff on the processing of new water right applications where conservancy boards are in place. Because the Board did not offer this suggestion during our earlier interview, it is not included in Appendix 4. In response here, we would note that the volume of transfer applications filed directly with Ecology from areas that have boards is almost entirely up to applicants (or a board's choice not to accept an application). The data show that the majority of those applications are being filed with Ecology rather than with the local conservancy boards. If the Legislature wishes to continue its emphasis on reducing the transfer application backlog, Ecology will need to continue its work on transfer applications.

# APPENDIX 3 – WATER CONSERVANCY BOARD PROFILES

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**Adams County Water Conservancy Board**

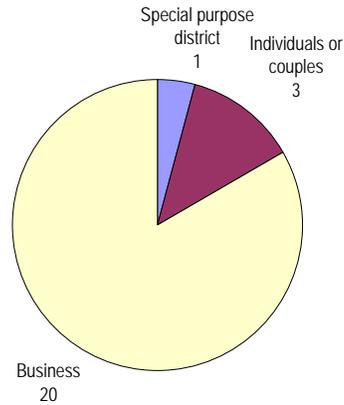
Snapshot as of April 1, 2004

About the Adams Board

- *Began operation in:* October 1999.
- *Number of Board members:* 3.
- *Board meeting place:* Conference room in Adams Conservation District building.
- *Fee charged by the Board:* \$500. The applicant drafts and pays for publication of the public notice in addition to the Board fee.
- During its tenure, the Adams Board has accepted 24 applications and has issued 11 decisions.

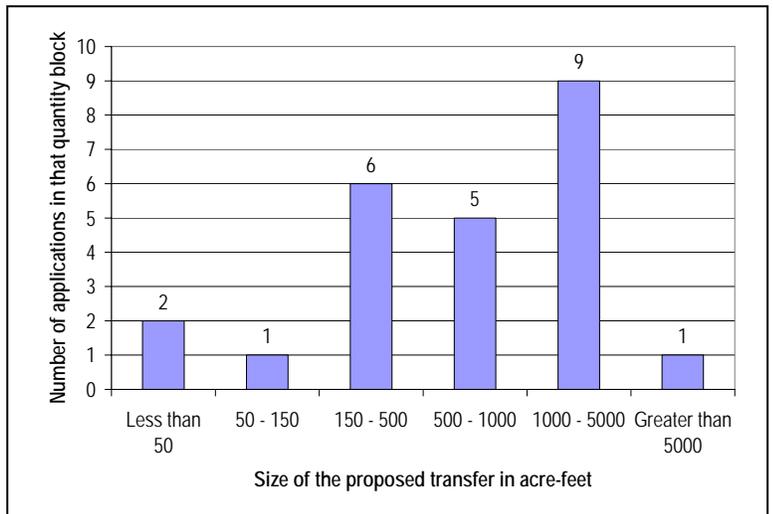
Applications to the Adams Board

Who applied to the Adams Board?



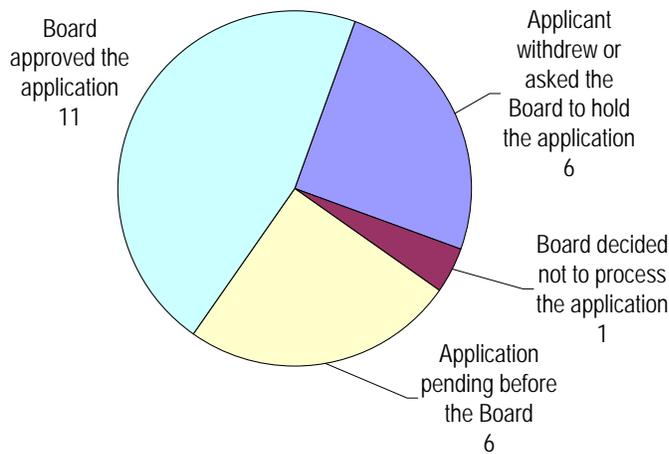
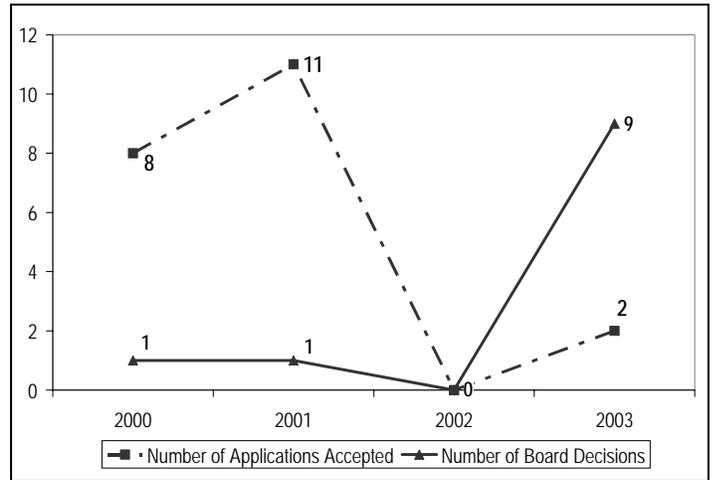
- Businesses filed the most applications in Adams County (20 of 24).
- 22 of the 24 applications were for groundwater transfers.
- 1/3 of the applications were filed originally with the Board; 2/3 were moved over from Ecology's queue.
- The purpose of use in most applications was irrigation to irrigation (16 of 24).

Applications to the Adams Board involved transfers of medium-to-larger quantities of water:



The Work of the Adams Board

Number of Board applications and Board decisions, by calendar year



Outcome of Board's work on applications

*Who drafts the public notice?* The applicant or the applicant's representative.

*Who drafts the Report of Examination (ROE)?* Usually the applicant's representative.

*Does Ecology review the draft ROEs?* Yes.

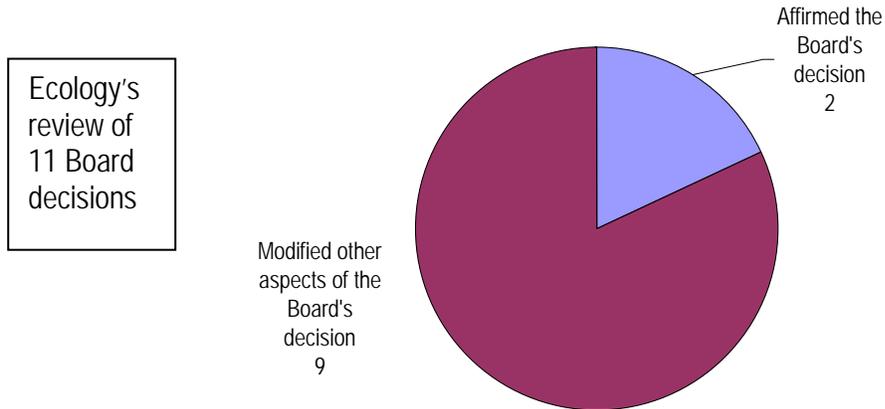
Adams Board Support

*Staff support:* Board contracts for administrative support from the Adams Conservation District.

*Public support:* The Board receives \$5000 per year from Adams County and \$2000 per year from the Big Bend Electric Cooperative. The Board has the use of the Conservation District conference room at no charge.

*Other support:* None.

Review of Adams Board Decisions



*Number of appeals:* None.

Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 886 days    Median: 1006 days    Range: 213 – 1006 days
- Number of days between the Board's acceptance of an application and Ecology's decision:  
Average: 955 days    Median: 1078 days    Range: 256 – 1078 days
- Number of times the Board withdrew its decision from Ecology: 0 of 11 decisions
- Number of times Ecology took the 30-day extension: 9 of 11 decisions

Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 0 of 11 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:  
-- 0 of 11 transfer approvals



**Benton County Water Conservancy Board**

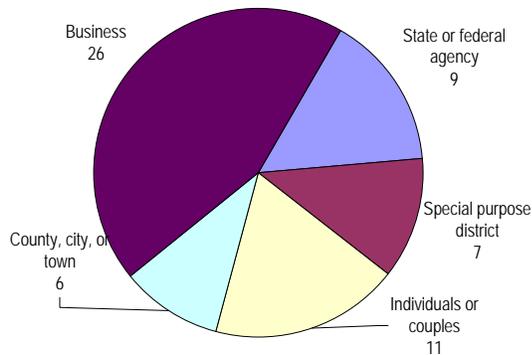
Snapshot as of April 1, 2004

About the Benton Board

- *Began operation in:* July 1998.
- *Number of Board members:* 3.
- *Board meeting place:* Conference room associated with private office of one of the Board members.
- *Fee charged by the Board:* \$250. The Board pays for publication of the public notice from the fee.
- During its tenure, the Benton Board has accepted 59 applications and has issued 39 decisions.

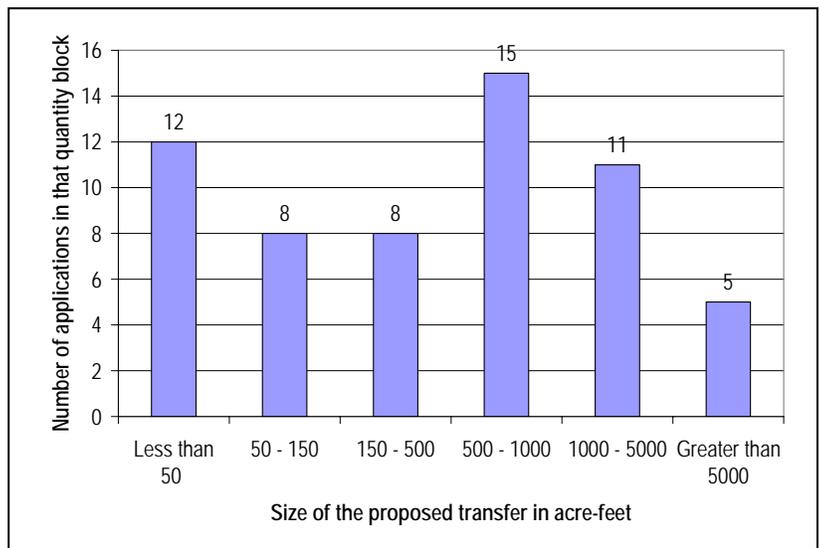
Applications to the Benton Board

Who applied to the Benton Board?



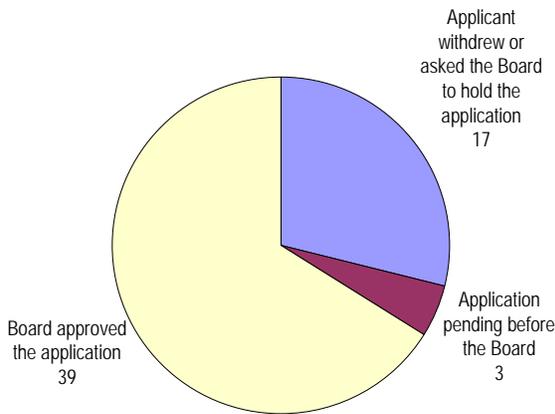
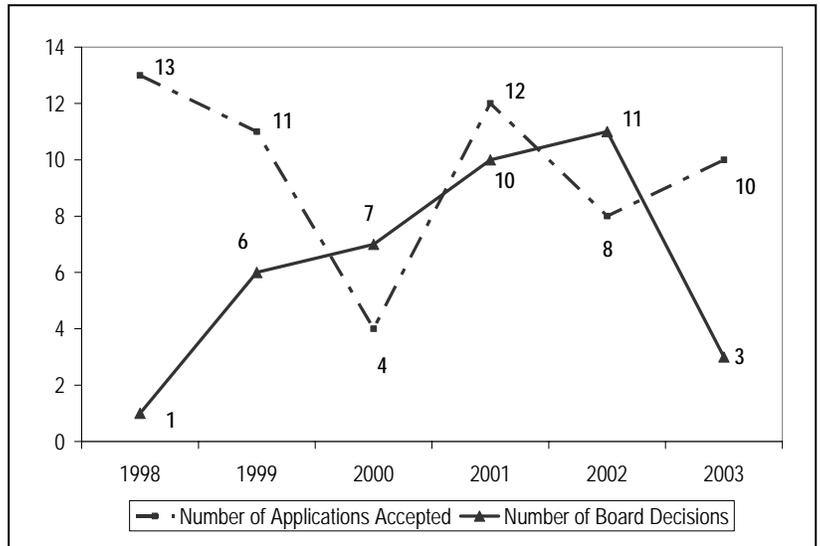
- Businesses filed the most applications in Benton County (26 of 59).
- 71 percent of applications involved groundwater; 29 percent surface water.
- 51 of the applications were filed originally with the Board; 8 were moved over from Ecology's queue.
- The purpose of use in most applications was irrigation to irrigation (35 of 59).

Applications to the Benton Board were for transfers of a range of smaller and larger quantities of water:



The Work of the Benton Board

Number of Board applications and Board decisions, by calendar year



Outcome of Board's work on applications

*Who drafts the public notice?*

A Board member.

*Who drafts the Report of Examination (ROE)?*

Board members.

*Does Ecology review the draft ROEs?*

No; however a Board member discusses each application with DOE staff.

Benton Board Support

*Staff support:*

Contracts for copying and mailing services, and with attorneys for legal and some public information services.

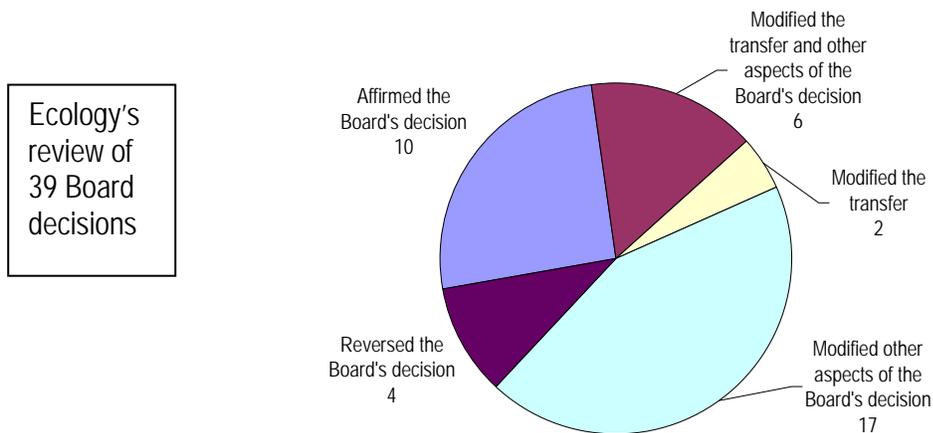
*Public support:*

One-time grants from the Benton County Commission (\$1000 and \$5000) and the Benton Rural Electric Association (\$1500). The County maintains a site to hold copies of Board records.

*Other support:*

Some payments for legal services have been provided by third parties.

Review of Benton Board Decisions



*Number of appeals:* Nine, to the Pollution Control Hearings Board. The Board was/is a party in appeals against Ecology decisions on three applications. Four appeals by a third party were dropped. Appeals by applicants on four Ecology decisions resulted in settlement agreements with Ecology, including three of the Ecology reversals. An appeal of the fourth Ecology reversal is pending in a State District Court of Appeals.

Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 281 days    Median: 132 days    Range: 49 – 1130 days
- Number of days between the Board's acceptance of an application and Ecology's decision:  
Average: 339 days    Median: 194 days    Range: 93 – 1219 days
- Number of times the Board withdrew its decision from Ecology: 2 of 39 decisions
- Number of times Ecology took the 30-day extension: 8 of 39 decisions

Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 14 of 39 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:<sup>40</sup>  
-- 1 of 35 transfer approvals    [Note Ecology issued four reversals]



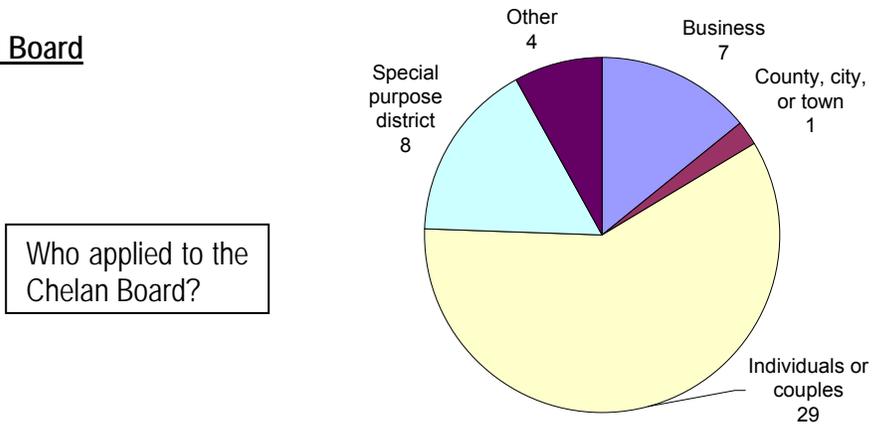
**Chelan County Water Conservancy Board**

Snapshot as of April 1, 2004

About the Chelan Board

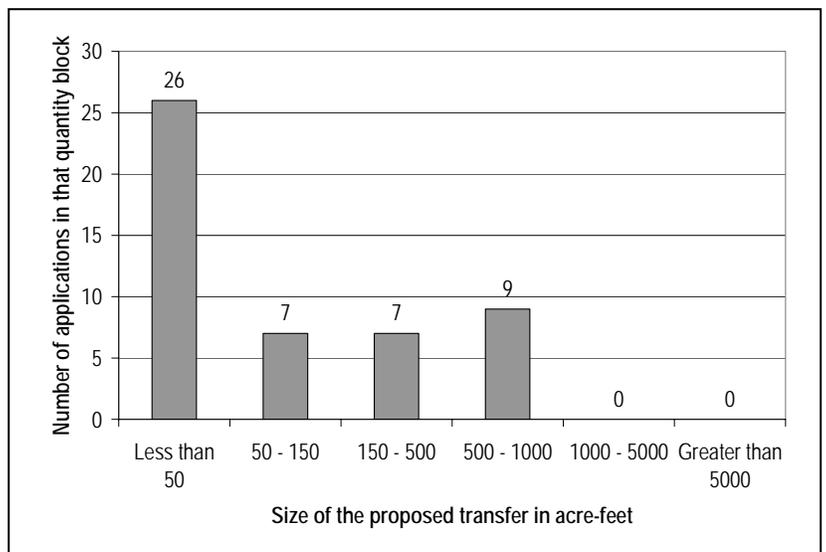
- *Began operation in:* November 1999.
- *Number of Board members:* 3.
- *Board meeting place:* Chelan County Planning Department hearing room.
- *Fee charged by the Board:* \$1000 deposit. The Board charges direct expenses against this deposit, plus a 25 percent surcharge, then returns the remaining balance to the applicant. The Board pays for publication of the public notice from the deposit.
- During its tenure, the Chelan Board has accepted 49 applications and has issued 24 decisions.

Applications to the Chelan Board



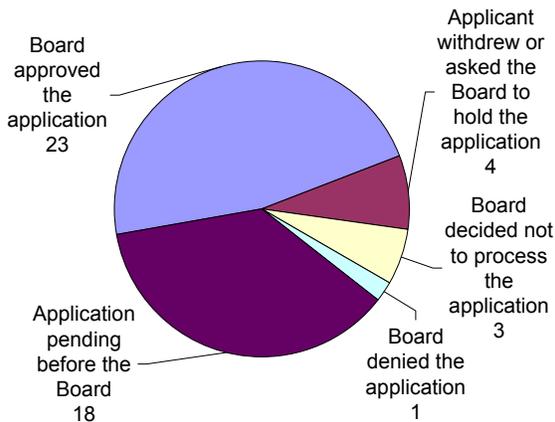
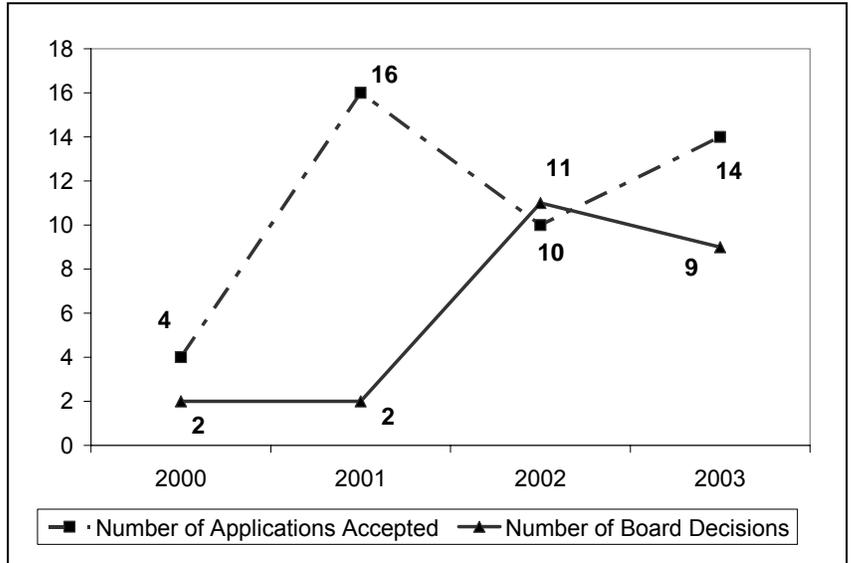
- Individuals or couples filed the most applications in Chelan County (29 of 49).
- 57 percent of applications involved surface water; 12 percent groundwater; 29 percent either surface to ground or ground to surface. One application involved a reservoir.
- $\frac{3}{4}$  of the applications were filed originally with the Board;  $\frac{1}{4}$  were moved over from Ecology's queue.
- The purpose of use in most applications was irrigation to irrigation (20 of 49 applications)

Applications to the Chelan Board were mostly for transfers of smaller quantities of water:



The Work of the Chelan Board

Number of Board applications and Board decisions, by calendar year



Outcome of Board's work on applications

*Who drafts the public notice?*

The Board has done so for some applications; if the applicant has an attorney, the attorney will often draft the notice, with Board review.

*Who drafts the Report of Examination (ROE)?*

The Board estimates about 70 percent are first drafted by the applicant's representative; 30 percent are originally drafted by the Board.

*Does Ecology review the draft ROEs?*

Yes.

Chelan Board Support

*Staff support:*

Board contracts for staff support from the Chelan County Natural Resources Program.

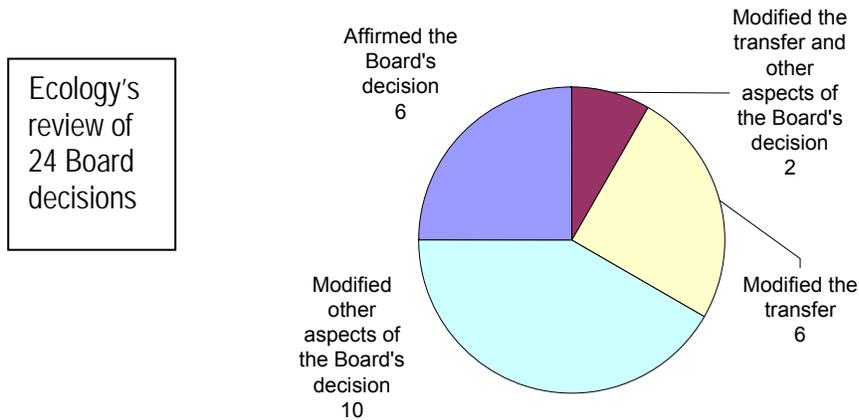
*Public support:*

Chelan County allows for use of Planning Department hearing room and manages the Board's financial transactions/accounts, at no charge.

*Other support:*

None.

Review of Chelan Board Decisions



*Number of appeals:* One, to the Pollution Control Hearings Board. The applicant appealed the Board's one denial; the PCHB upheld the Chelan Board/Ecology decision.

Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 226 days    Median: 216 days    Range: 85 – 427 days
- Number of days between the Board's acceptance of an application and Ecology's decision:  
Average: 280 days    Median: 271 days    Range: 118 – 498 days
- Number of times the Board withdrew its decision from Ecology: 17 of 24 decisions
- Number of times Ecology took the 30-day extension: 20 of 24 decisions

Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 6 of 23 transfer approvals    [Note the Board denied one application]
- Number of Ecology decisions that reduced water quantity from the Board's decision:<sup>41</sup>  
-- 7 of 23 transfer approvals



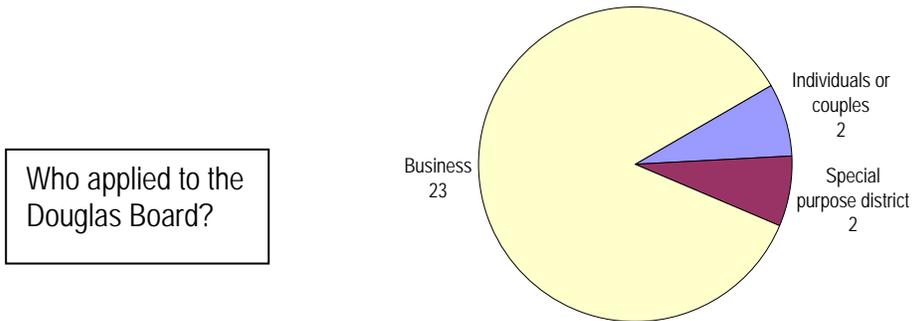
**Douglas County Water Conservancy Board**

Snapshot as of April 1, 2004

About the Douglas Board

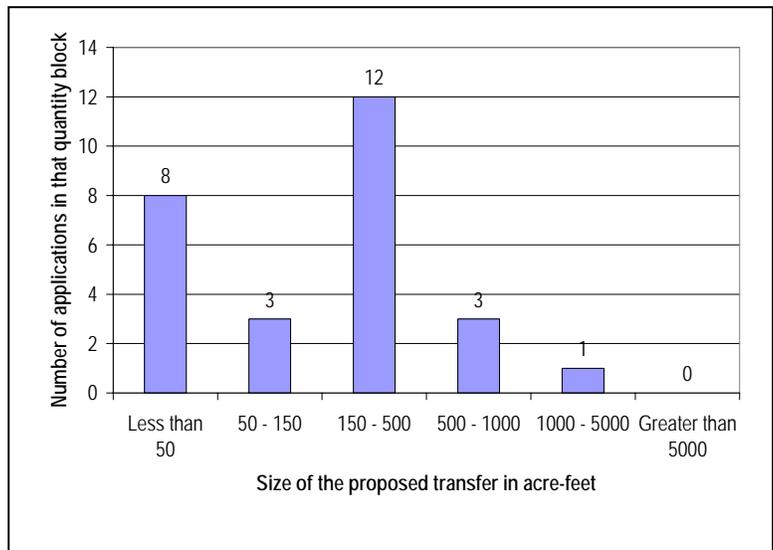
- *Began operation in:* March 2000. Currently the Board is not operating due to a lapse in meeting the continuing education requirements.
- *Number of Board members:* Currently 3 – plan to expand to 5.
- *Board meeting place:* Waterville City Hall.
- *Fee charged by the Board:* \$600. The applicant drafts and then pays for publication of the public notice in addition to the Board fee.
- During its tenure, the Douglas Board has accepted 27 applications and has issued 14 decisions.

Applications to the Douglas Board



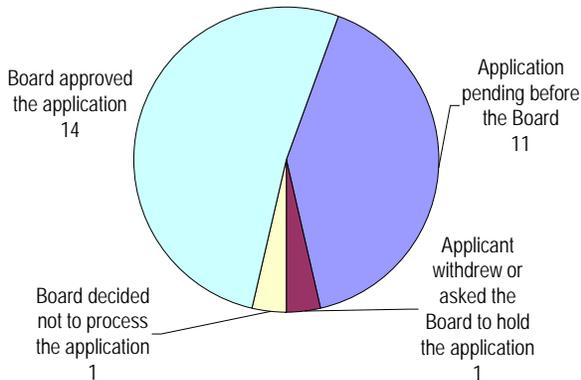
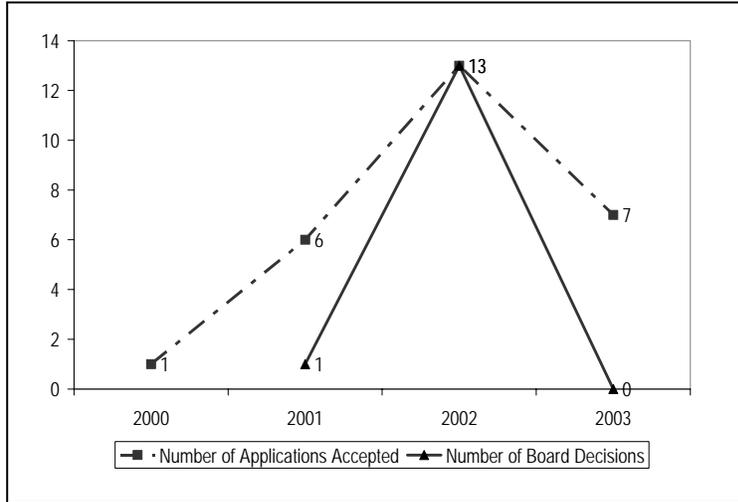
- Businesses filed the most applications in Douglas County (23 of 27).
- About half of the applications were for surface water transfers; another 7, surface to groundwater.
- All but two of the applications were filed originally with the Board rather than coming from Ecology.
- The purpose of use in most applications was irrigation to irrigation (15 of 27).

Applications to the Douglas Board involved mainly transfers of small or medium-sized quantities of water:



The Work of the Douglas Board

Number of Board applications and Board decisions, by calendar year



Outcome of Board's work on applications

*Who drafts the public notice?*

The applicant or the applicant's attorney/consultant, with Board review.

*Who drafts the Report of Examination (ROE)?*

The Board does not require applicants to hire a professional to do the drafting but advises them that doing so will speed up the process. The Board estimates about 80 percent of the ROEs have been drafted by the applicant's attorney or consultant.

*Does Ecology review the draft ROEs?*

Yes.

Douglas Board Support

*Staff support:*

Contract with a CPA to handle administrative matters for the Board.

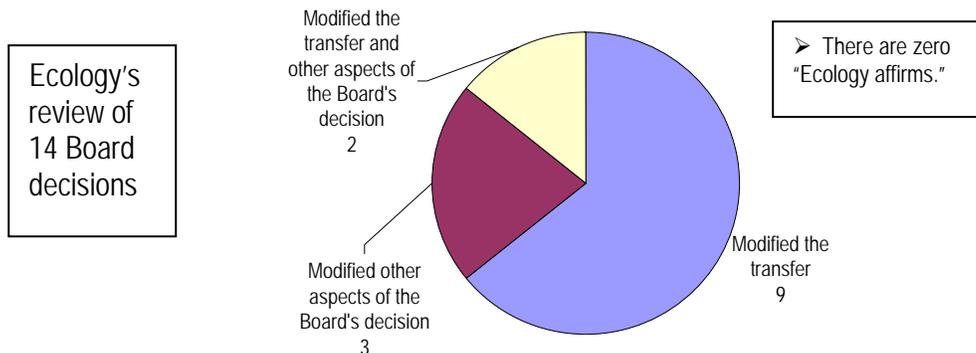
*Public support:*

Use of the Waterville City Hall for meetings at no charge.

*Other support:*

None.

Review of Douglas Board Decisions



*Number of appeals:* Eight, to the Pollution Control Hearings Board. Ecology reached a settlement agreement with the applicant on this package of eight applications.

Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 160 days    Median: 105 days    Range: 105 – 301 days
- Number of days between the Board's acceptance of an application and Ecology's decision:  
Average: 228 days    Median: 182 days    Range: 182 – 336 days
- Number of times the Board withdrew its decision from Ecology: 1 of 14 decisions
- Number of times Ecology took the 30-day extension: 11 of 14 decisions

Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 3 of 14 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:<sup>42</sup>  
-- 11 of 14 transfer approvals



**Ferry County Water Conservancy Board**

Snapshot as of April 1, 2004

**About the Ferry Board**

- *Began operation in:* May 2000.
- *Number of Board members:* 3.
- *Board meeting place:* Ferry Conservation District meeting room.
- *Fee charged by the Board:* \$250 (\$100 application fee; \$150 processing fee). The Board will pay for publication of the public notice from the fee.
- During its tenure, the Ferry Board has not yet accepted any applications nor issued any decisions.

**The Work of the Ferry Board**

- |  |  |
|--|--|
| <i>Who drafts the public notice?</i>               | The Board plans to do this.  |
| <i>Who drafts the Report of Examination (ROE)?</i> | This has not yet been an issue for the Board, though the Board does not see having someone else draft the ROE as a problem, so long as the Board reviews it carefully. |
| <i>Does Ecology review the draft ROEs?</i>         | The Board has not yet had a draft ROE.   |

**Ferry Board Support**

- |                        |  |
|------------------------|--|
| <i>Staff support:</i>  | None.  |
| <i>Public support:</i> | Ferry County has reimbursed Board members for travel costs to attend training. |
| Other support:         | None.  |



**Franklin County Water Conservancy Board**

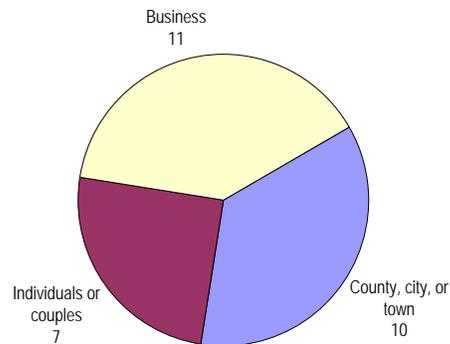
Snapshot as of April 1, 2004

**About the Franklin Board**

- *Began operation in:* June 1999.
- *Number of Board members:* 3.
- *Board meeting place:* Conference room in U.S. Department of Agriculture Ag Service Center.
- *Fee charged by the Board:* \$650 for up to two related applications; \$650 each thereafter. The Board pays for publication of the public notice using the fee.
- During its tenure, the Franklin Board has accepted 28 applications and has issued 18 decisions.

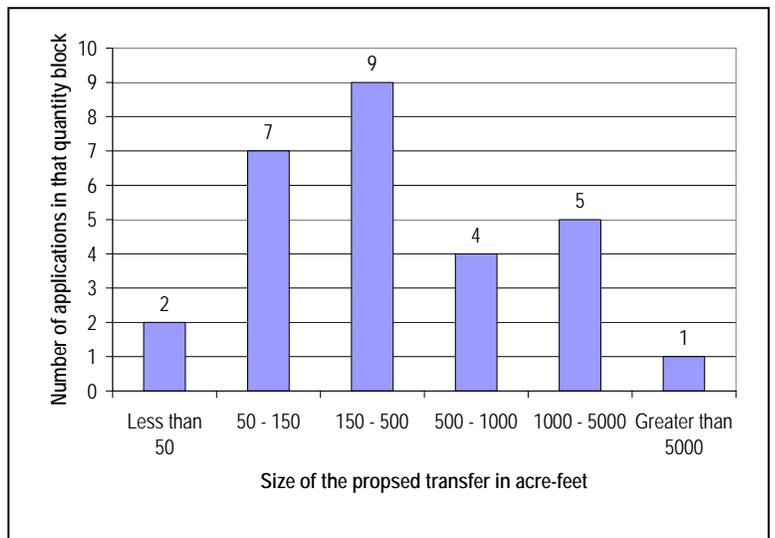
**Applications to the Franklin Board**

Who applied to the Franklin Board?



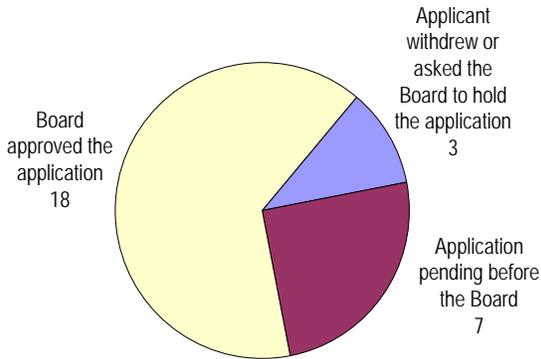
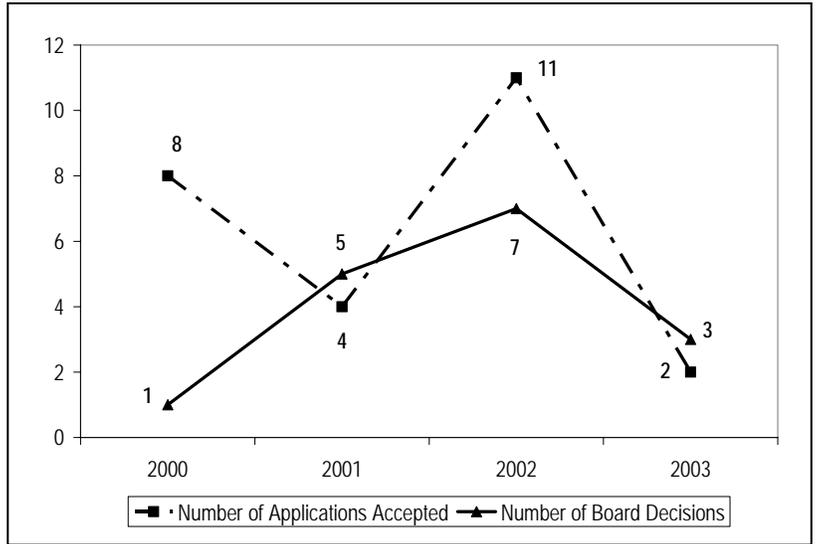
- Businesses and local governments filed the most applications in Franklin County (11 and 10 of 28).
- 23 of the 28 applications were for groundwater transfers.
- 25 of the applications were filed originally with the Board; 3 were moved over from Ecology's queue.
- In addition to these applications, the Board accepted 8 more in this time frame, but the applicants withdrew them immediately before the Board forwarded the applications to Ecology. Two were from a state agency, and 6 were from a local government.

Applications to the Franklin Board were mostly for transfers of small to medium-sized quantities of water:



The Work of the Franklin Board

Number of Board applications and Board decisions, by calendar year



Outcome of Board's work on applications

*Who drafts the public notice?*

Board staff, though sometimes the applicant's representative will offer to draft it.

*Who drafts the Report of Examination (ROE)?*

Typically, the applicant's representative. A few applicants have done it themselves, and Board staff helped assemble those into draft ROEs.

*Does Ecology review the draft ROEs?*

The Board asked for that review in the past but no longer does so; the Board reports it would do so if some compelling issue presented itself.

Franklin Board Support

*Staff support:*

Contract for the time of a person with the Franklin Conservation District.

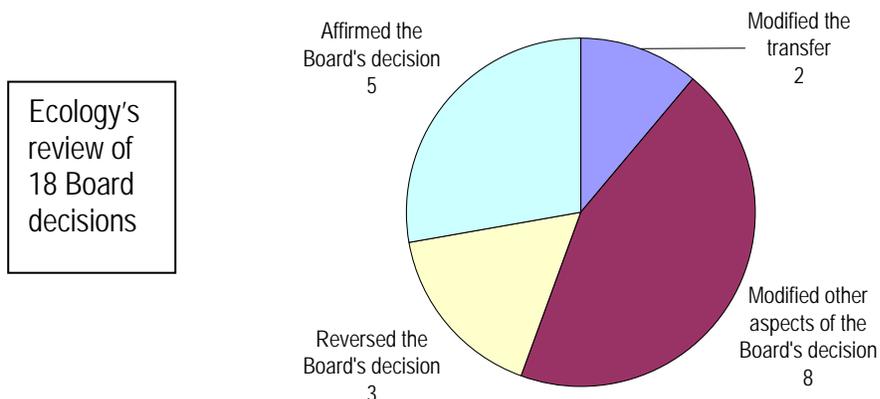
*Public support:*

The Conservation District provides the use of its conference room and a place to maintain Board records, at no charge.

*Other support:*

None.

**Review of Franklin Board Decisions**



*Number of appeals:* Three, to the Pollution Control Hearings Board. One appeal brought by a third party was dismissed. In two appeals brought by an applicant in response to an Ecology reversal, Ecology and the applicant reached a settlement agreement.

**Length of the Decision-Making Process**

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 349 days    Median: 239 days    Range: 119 – 1288 days
- Number of days between the Board's acceptance of an application and Ecology's decision:  
Average: 392 days    Median: 281 days    Range: 126 – 1329 days
- Number of times the Board withdrew its decision from Ecology: 3 of 18 decisions
- Number of times Ecology took the 30-day extension: 3 of 18 decisions

**Water Quantity Reductions**

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 7 of 18 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:<sup>43</sup>  
-- 2 of 15 transfer approvals    [Note Ecology issued three reversals]



**Grant County Water Conservancy Board**

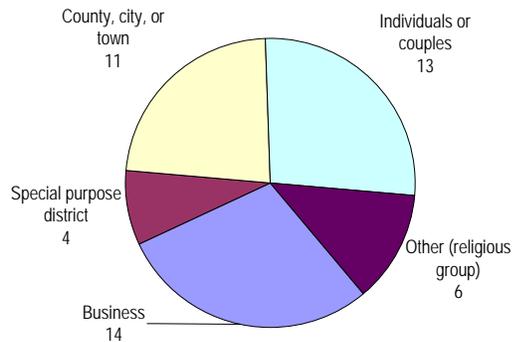
Snapshot as of April 1, 2004

About the Grant Board

- *Began operation in:* September 1999.
- *Number of Board members:* 3.
- *Board meeting place:* Small building associated with private workplace of a former Board member.
- *Fee charged by the Board:* \$500 (\$100 initial fee; \$400 processing fee). The applicant pays for the publication of the public notice in addition to the Board fee.
- During its tenure, the Grant Board has accepted 48 applications and has issued 25 decisions.

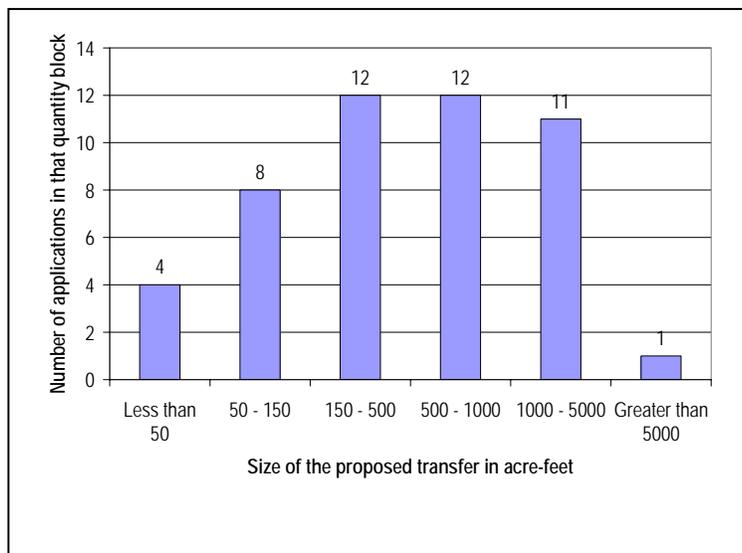
Applications to the Grant Board

Who applied to the Grant Board?



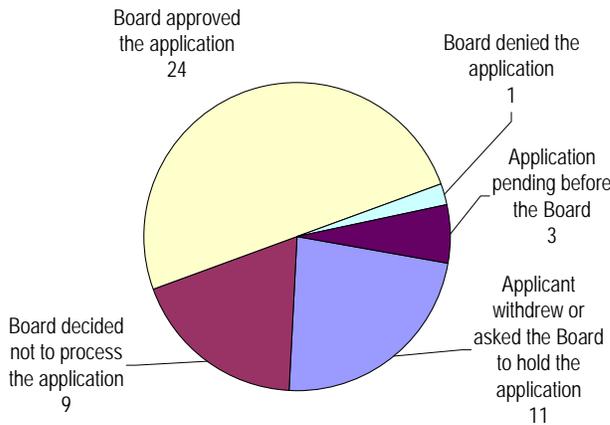
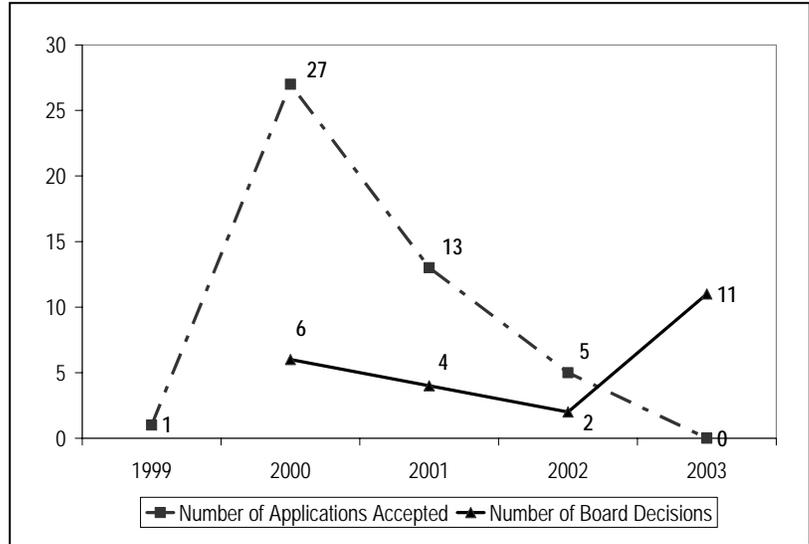
- The Grant Board has received applications from a variety of applicant categories.
- All of the applications were for groundwater transfers (no surface water applications).
- 37 of the applications were filed originally with the Board; 11 were moved over from Ecology's queue.
- The purpose of use in most applications was irrigation to irrigation (23 of 48).

Applications to the Grant Board involved medium-to-larger quantities of water:



The Work of the Grant Board

Number of Board applications and Board decisions, by calendar year



Outcome of Board's work on applications

*Who drafts the public notice?*

The Board.

*Who drafts the Report of Examination (ROE)?*

The Board.

*Does Ecology review the draft ROEs?*

Sometimes. Alternatively a Board member will meet with Ecology to discuss and get advice on issues in a particular application.

Grant Board Support

*Staff support:*

Contract for secretarial support for help with meeting minutes and filing.

*Public support:*

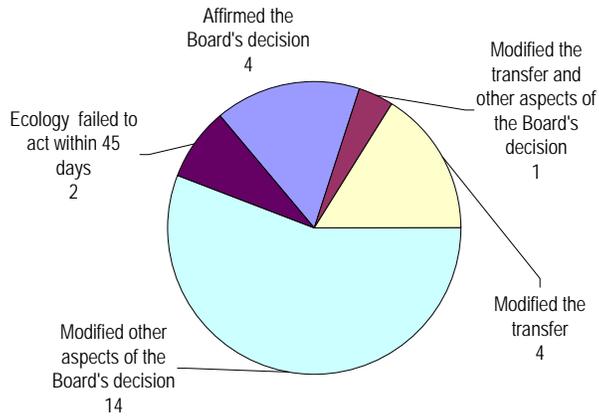
Grant County donated a computer for the Board.

*Other support:*

Use of the small building for meeting space and to store Board records (building is associated with the private sector workplace of an original Board member).

Review of Grant Board Decisions<sup>44</sup>

Ecology's review of 25 Board decisions



*Number of appeals:* Five, to the Pollution Control Hearings Board. Four of these (a set of applications) are pending with the PCHB. In the fifth case, the Grant Board/Ecology decision to deny an application was upheld by the PCHB; the case is now pending in Grant County Superior Court.

Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 519 days    Median: 581 days    Range: 119 – 1074 days
- Number of days between the Board's acceptance of an application and Ecology's decision:  
Average: 565 days    Median: 623 days    Range: 175 – 1119+ days
- Number of times the Board withdrew its decision from Ecology: 8 of 25 decisions
- Number of times Ecology took the 30-day extension: 2 of 25 decisions

Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 4 of 24 transfer approvals    [Note the Board denied one application]
- Number of Ecology decisions that reduced water quantity from the Board's decision:<sup>45</sup>  
-- 2 of 22 transfer approvals    [Note Ecology failed to act on two Board decisions]

**Island County Water Conservancy Board**

Snapshot as of April 1, 2004

**About the Island Board**

- *Began operation in:* August 2001.
- *Number of Board members:* 3.
- *Board meeting place:* The Island County Commission hearing room, the Oak Harbor City Hall, or the Coupeville City Hall.
- *Fee charged by the Board:* \$750 (\$150 is non-refundable when application comes in). The applicant pays for publication of the public notice in addition to the Board fee.
- During its tenure, the Island Board has accepted 2 applications and has issued 2 decisions.

**Applications to the Island Board**

- One business (a water company) filed the two applications in Island County.
- Both applications were for groundwater transfers.
- Both applications were moved over from Ecology's queue rather than filed originally with the Board.
- The purpose of use in both applications was community domestic supply.
- Both applications asked for transfers of water in the 50 – 150 acre-foot range.

**The Work of the Island Board**

Number of Board applications and Board decisions, by calendar year

The Board accepted the two applications in 2001 and issued its two decisions in 2002.

Outcome of Board's work on applications

The Board approved both applications.

*Who drafts the public notice?* The Board.

*Who drafts the Report of Examination (ROE)?* The Board.

*Does Ecology review the draft ROEs?* Yes.

### Island Board Support

- Staff support:* Receive free hydrology assistance from Island County staff expert.
- Public support:* Use of the county and city meeting space at no charge. County allows use of the hydrologist's time at no charge and donated the use of a file cabinet. County also paid \$1500 to purchase Errors and Omissions Insurance and would renew that if the Board accepted another application.
- Other support:* None.

### Review of Island Board Decisions



*Number of appeals:* None.

### Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
*Not calculated for Boards with two or fewer decisions.*
- Number of days between the Board's acceptance of an application and Ecology's decision:  
*Not calculated for Boards with two or fewer decisions.*
- Number of times the Board withdrew its decision from Ecology: 0 of 2 decisions
- Number of times Ecology took the 30-day extension: 0 of 2 decisions

### Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 0 of 2 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:  
-- 0 of 2 transfer approvals

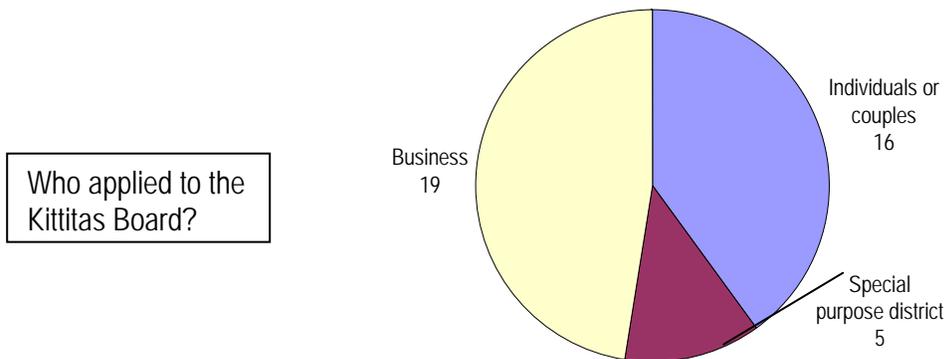
**Kittitas County Water Conservancy Board**

Snapshot as of April 1, 2004

About the Kittitas Board

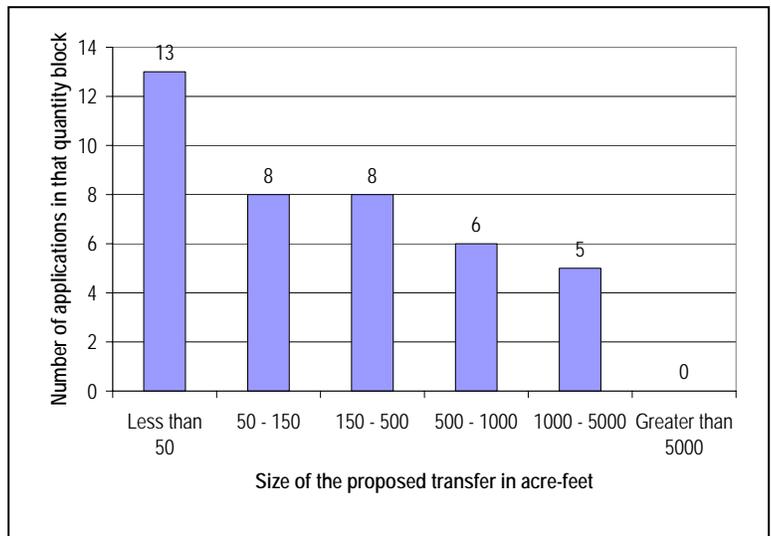
- *Began operation in:* October 2000.
- *Number of Board members:* 3.
- *Board meeting place:* Kittitas County Commission meeting room.
- *Fee charged by the Board:* \$600 (\$100 submittal fee; \$500 acceptance fee). The applicant drafts and pays for publication of the public notice in addition to the Board fee.
- During its tenure, the Kittitas Board has accepted 40 applications and has issued 27 decisions.

Applications to the Kittitas Board



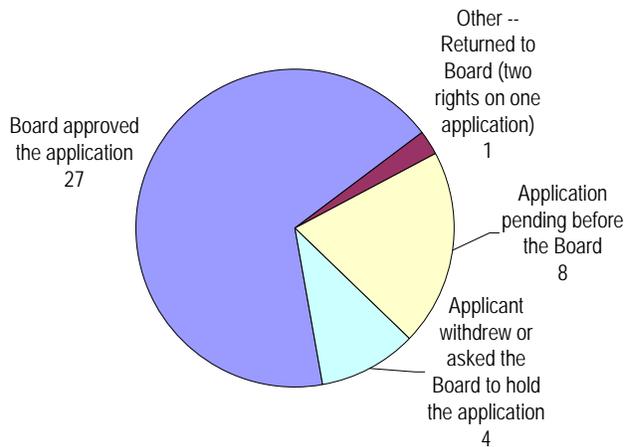
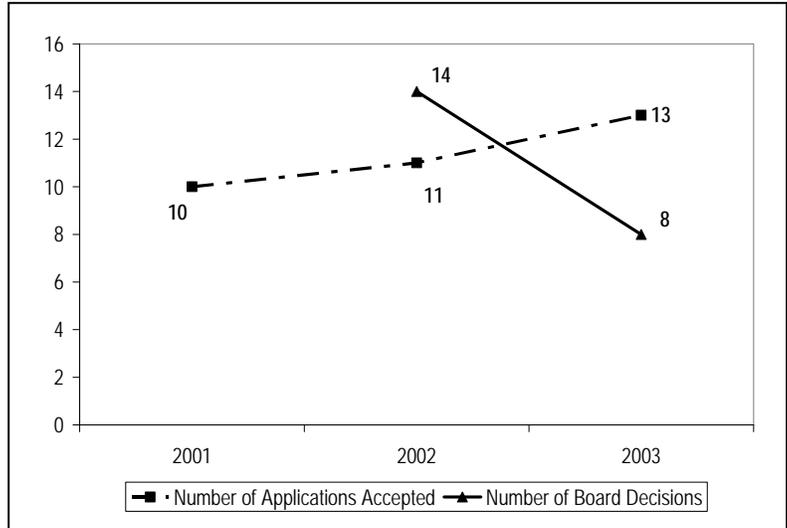
- Businesses and individuals filed the most applications in Kittitas County (19 and 16 of 40).
- 35 of the 40 applications involved surface water.
- 29 of the applications were filed originally with the Board; 11 were moved over from Ecology's queue.
- The purpose of use in most applications was irrigation to irrigation (25 of 40).

Applications to the Kittitas Board were mainly for transfers of small and medium-sized quantities of water:



The Work of the Kittitas Board

Number of Board applications and Board decisions, by calendar year



Outcome of Board's work on applications

*Who drafts the public notice?*

The applicant or applicant's representative.

*Who drafts the Report of Examination (ROE)?*

The applicant or the applicant's representative, usually an attorney. The Board sees its role as being a reviewer.

*Does Ecology review the draft ROEs?*

No; the Board does not request such a review.

Kittitas Board Support

*Staff support:*

Board contracts with a person for secretarial support. At one time contracted for legal services.

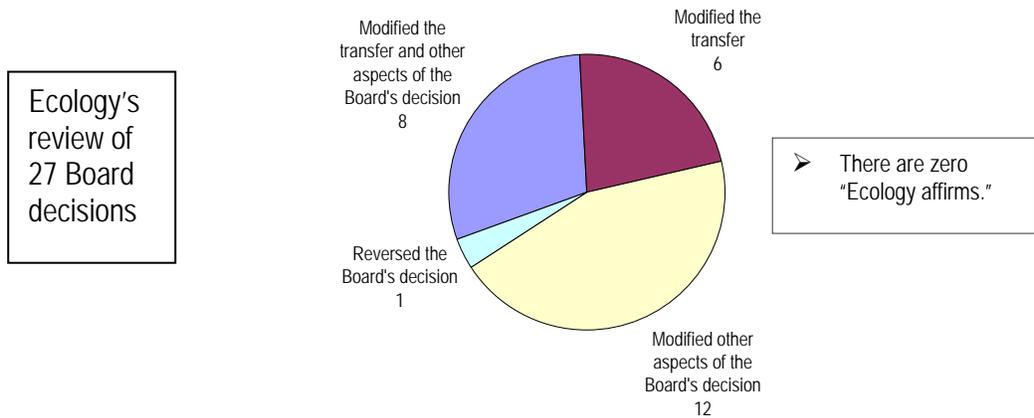
*Public support:*

The Kittitas County Commission allows the Board to use its meeting room at no charge and provides a place to store the Board's files. The County paid some reimbursement for travel expenses for the initial Board training.

*Other support:*

None.

Review of Kittitas Board Decisions



*Number of appeals:* Eight, to Yakima County Superior Court. One appeal was dropped, and a set of six appeals was settled. One appeal is still pending.

Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 181 days    Median: 152 days    Range: 56 – 567 days
- Number of days between the Board's acceptance of an application and Ecology's decision:<sup>46</sup>  
Average: 247 days    Median: 203 days    Range: 108 – 612+ days
- Number of times the Board withdrew its decision from Ecology: 4 of 27 decisions
- Number of times Ecology took the 30-day extension: 11 of 27 decisions

Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 9 of 27 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:<sup>47</sup>  
-- 9 of 26 transfer approvals                      [Note Ecology issued one reversal]



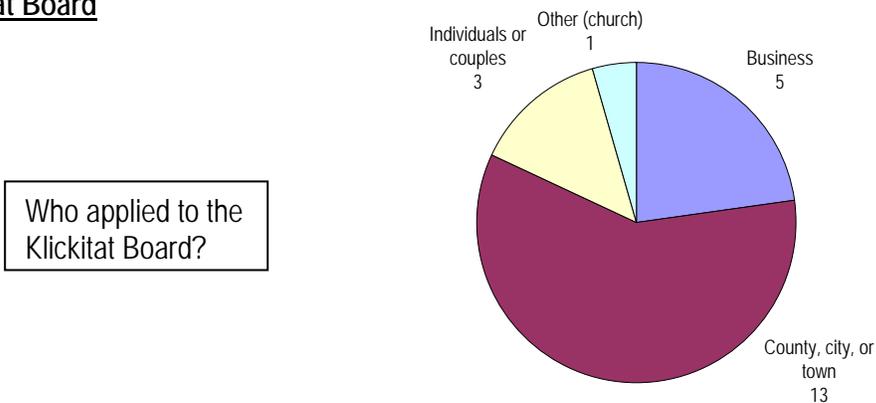
**Klickitat County Water Conservancy Board**

Snapshot as of April 1, 2004

About the Klickitat Board

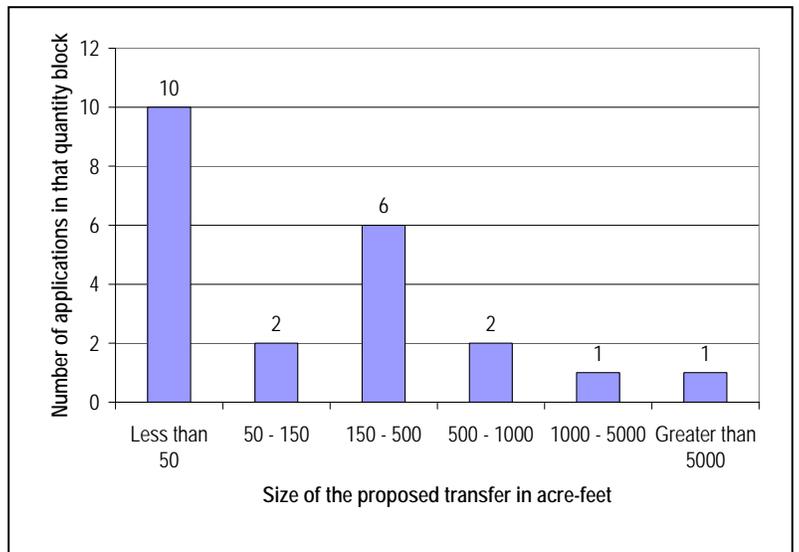
- *Began operation in:* July 1999.
- *Number of Board members:* 5.
- *Board meeting place:* Klickitat County Commissioners' meeting room.
- *Fee charged by the Board:* \$500. The Board pays for publication of the public notice from the fee.
- During its tenure, the Klickitat Board has accepted 22 applications and has issued 20 decisions.

Applications to the Klickitat Board



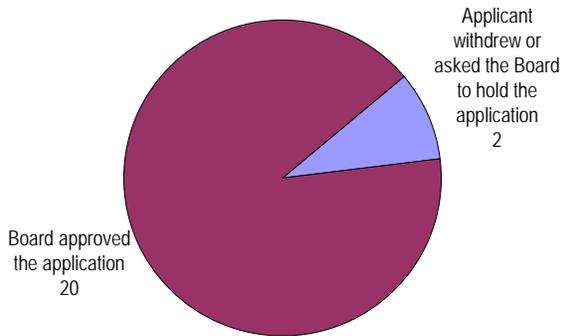
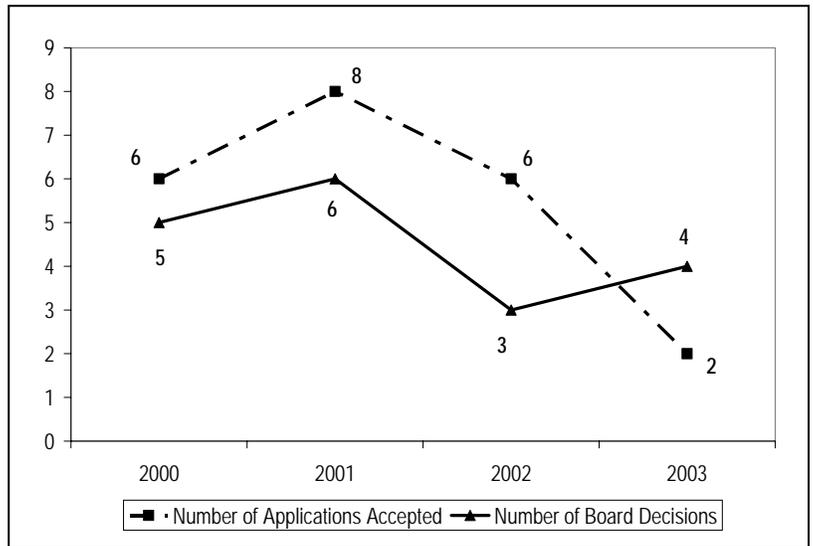
- One local government (City of Goldendale) filed the most applications in Klickitat County (13 of 22).
- 16 of the 22 applications were for transfers of groundwater.
- 19 of the applications were filed originally with the Board; 3 were moved over from Ecology's queue.
- The purpose of use in most applications was irrigation to irrigation or irrigation to municipal/domestic.

Applications to the Klickitat Board were mostly for transfers of smaller quantities of water:



**The Work of the Klickitat Board**

Number of Board applications and Board decisions, by calendar year



Outcome of Board's work on applications

*Who drafts the public notice?*

Board staff.

*Who drafts the Report of Examination (ROE)?*

The Board drafts the ROE if the applicant does not have a competent consultant to do so.

*Does Ecology review the draft ROEs?*

Yes, in 50 percent or more cases.

**Klickitat Board Support**

*Staff support:*

The Board contracts with a person for administrative support.

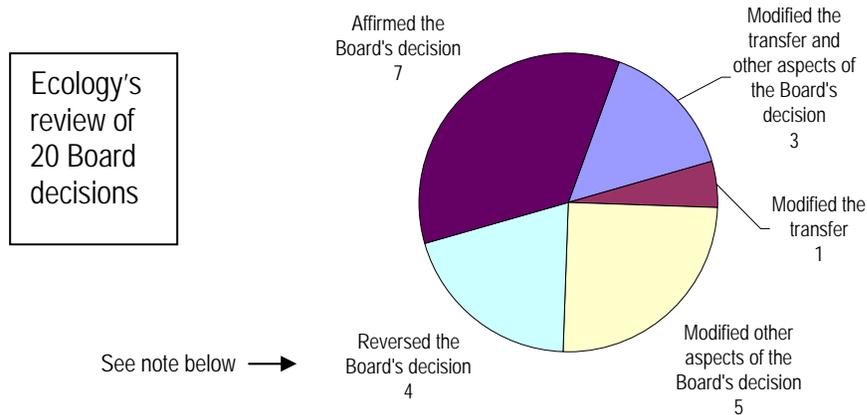
*Public support:*

The Board has received between \$10,000 and \$12,000 per year from Klickitat County. The County provides the Board with use of a meeting room, and use of office space and equipment, at no charge.

*Other support:*

None.

Review of Klickitat Board Decisions



Number of appeals: None.

Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 127 days    Median: 69 days    Range: 49 – 482 days
- Number of days between the Board's acceptance of an application and Ecology's decision:  
Average: 175 days    Median: 126 days    Range: 94 – 525 days
- Number of times the Board withdrew its decision from Ecology: 2 of 20 decisions
- Number of times Ecology took the 30-day extension: 7 of 20 decisions

Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 4 of 20 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:<sup>48</sup>  
-- 3 of 16 transfer approvals                      [Note Ecology issued four reversals]



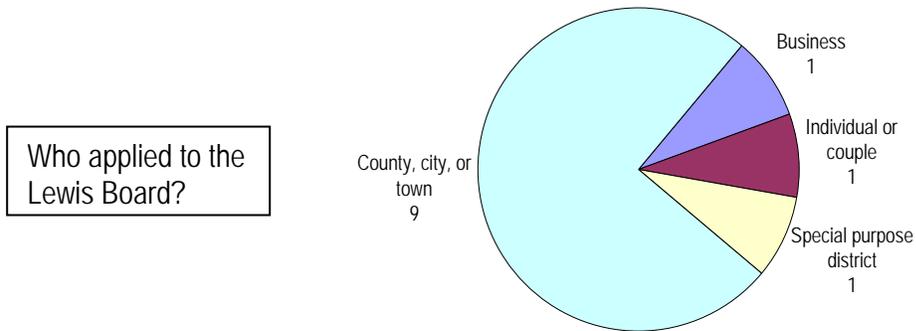
Lewis County Water Conservancy Board

Snapshot as of April 1, 2004

About the Lewis Board

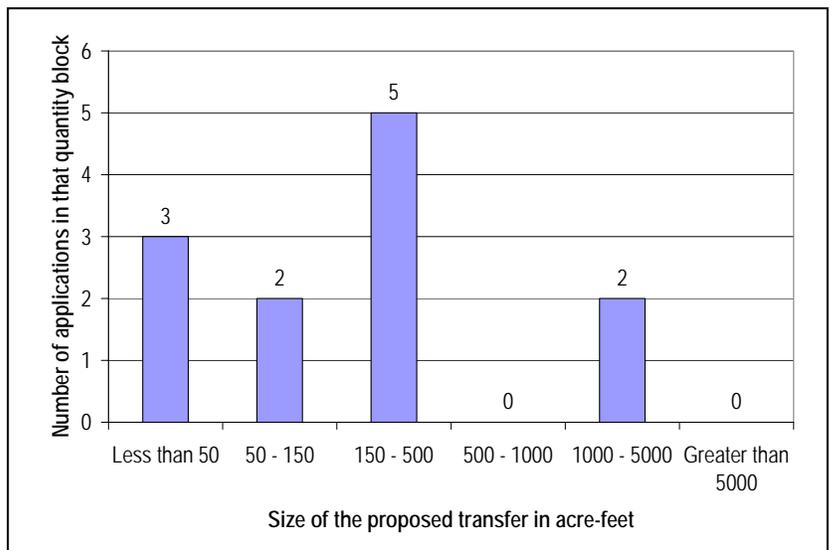
- *Began operation in:* July 1998.
- *Number of Board members:* 5.
- *Board meeting place:* Meeting room at local U.S. Department of Agriculture office.
- *Fee charged by the Board:* \$500. The Board pays for publication of the public notice from the fee.
- During its tenure, the Lewis Board has accepted 12 applications and has issued 6 decisions.

Applications to the Lewis Board



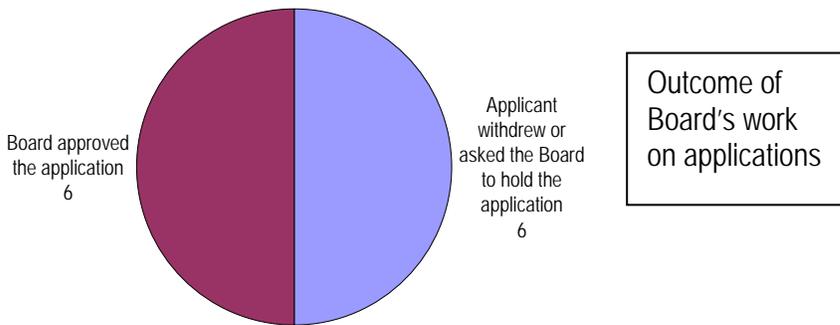
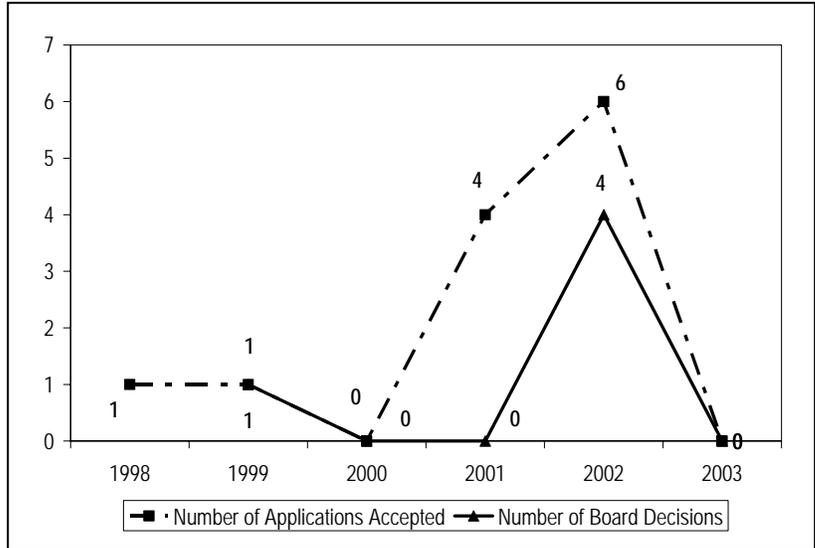
- The City of Centralia filed the most applications in Lewis County (9 of 12).
- ¾ of the applications were for groundwater transfers; ¼ for surface water.
- All of the applications were filed originally with the Board rather than moved over from Ecology's queue.
- Applications involved a mix of municipal, irrigation, and industrial purposes.

Applications to the Lewis Board were mainly for transfers of small to medium-sized quantities of water:



The Work of the Lewis Board

Number of Board applications and Board decisions, by calendar year



*Who drafts the public notice?*

A Board member.

*Who drafts the Report of Examination (ROE)?*

The Board has drafted the five public sector ROEs. The applicant's attorney drafted the ROE for the business applicant.

*Does Ecology review the draft ROEs?*

Yes.

Lewis Board Support

*Staff support:*

Board contracts with a person at the local USDA office for assistance with meeting minutes, files, and telephone inquiries.

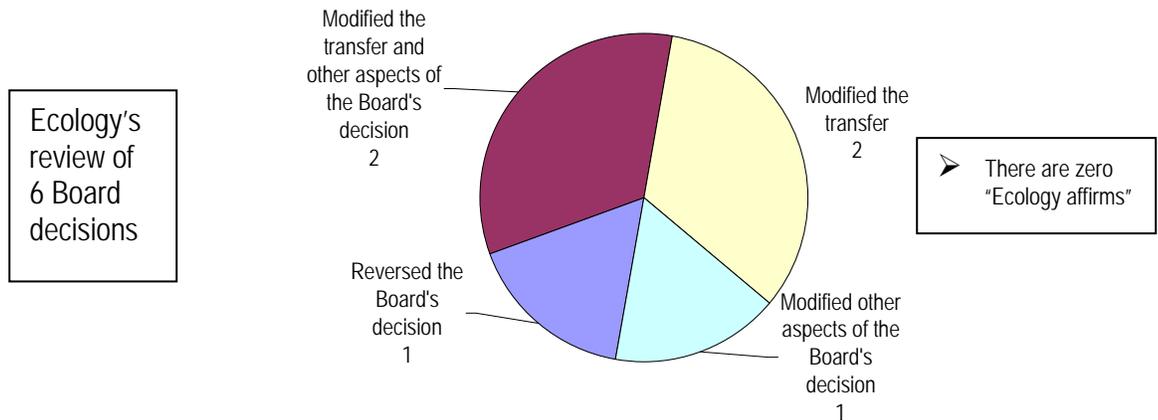
*Public support:*

\$1500 grant from Lewis County to help Board get started; use of the USDA meeting room at no charge.

*Other support:*

The Board received \$700 in private funds at start-up.

**Review of Lewis Board Decisions**



*Number of appeals:* One, to the Pollution Control Hearings Board. In appealing Ecology's reversal, the local water/sewer district applicant reached a settlement agreement involving Ecology and the local Health District on the consolidation of several exempt wells.

**Length of the Decision-Making Process**

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 187 days    Median: 154 days    Range: 108 – 399 days
- Number of days between the Board's acceptance of an application and Ecology's decision<sup>49</sup>:  
Average: 264 days    Median: 230 days    Range: 148 – 519 days
- Number of times the Board withdrew its decision from Ecology: 0 of 6 decisions
- Number of times Ecology took the 30-day extension: 5 of 6 decisions

**Water Quantity Reductions**

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 2 of 6 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:  
-- 0 of 5 transfer approvals                      [Note Ecology issued one reversal]



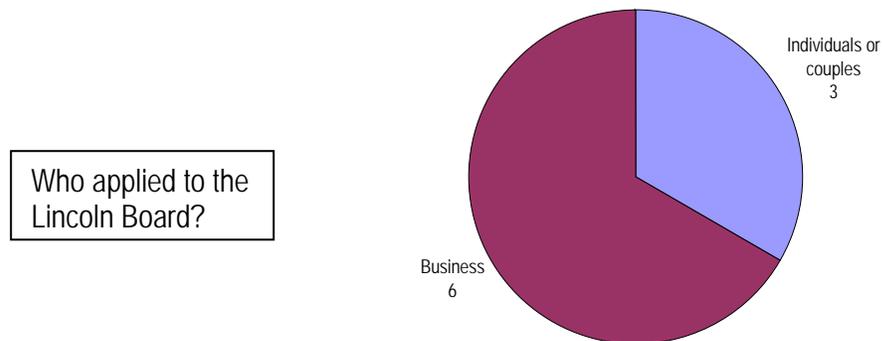
## Lincoln County Water Conservancy Board

Snapshot as of April 1, 2004

### About the Lincoln Board

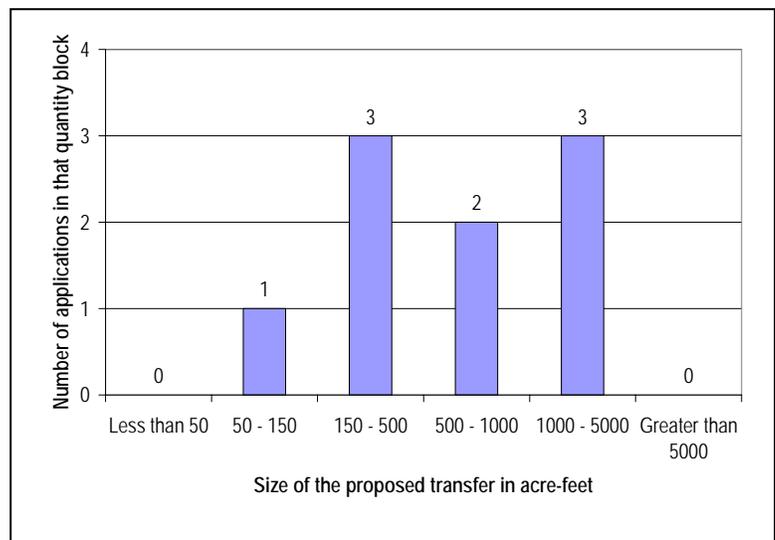
- *Began operation in:* November 1999.
- *Number of Board members:* 3.
- *Board meeting place:* Lincoln County Commission meeting room.
- *Fee charged by the Board:* \$500. The applicant drafts and pays for publication of the public notice in addition to the Board fee.
- During its tenure, the Lincoln Board has accepted 9 applications and has issued 5 decisions.

### Applications to the Lincoln Board



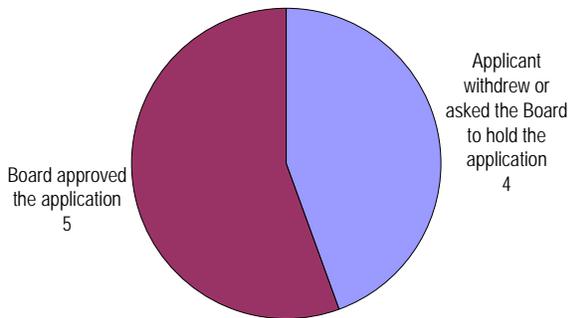
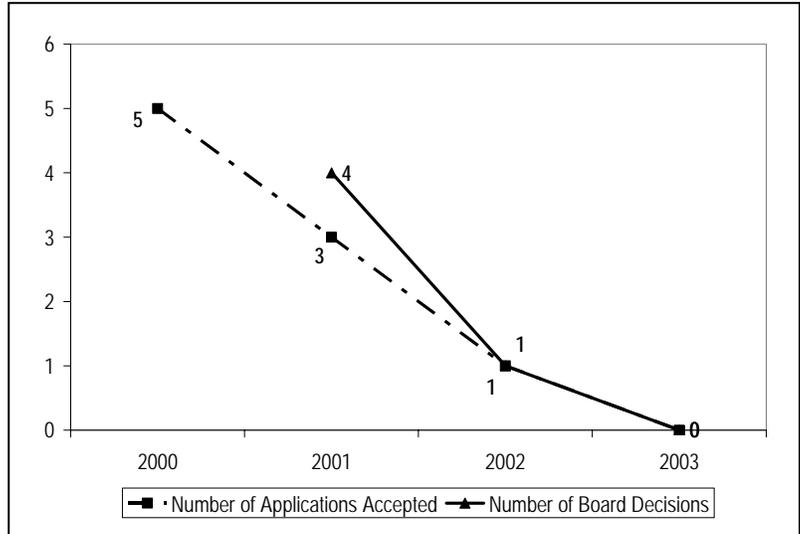
- Businesses filed the most applications in Lincoln County (6 of 9).
- $\frac{2}{3}$  of the applications were for groundwater transfers.
- 5 of the applications were filed originally with the Board; 4 were moved over from Ecology's queue.
- The purpose of use in most applications was irrigation to irrigation (7 of 9).

Applications to the Lincoln Board involved transfers of medium to larger-sized quantities of water:



The Work of the Lincoln Board

Number of Board applications and Board decisions, by calendar year



Outcome of Board's work on applications

*Who drafts the public notice?*

The applicant or the applicant's attorney, with Board review.

*Who drafts the Report of Examination (ROE)?*

Initially Board members drafted the ROEs. More recently the applicants' attorneys have been doing the drafting.

*Does Ecology review the draft ROEs?*

Yes.

Lincoln Board Support

*Staff support:*

None.

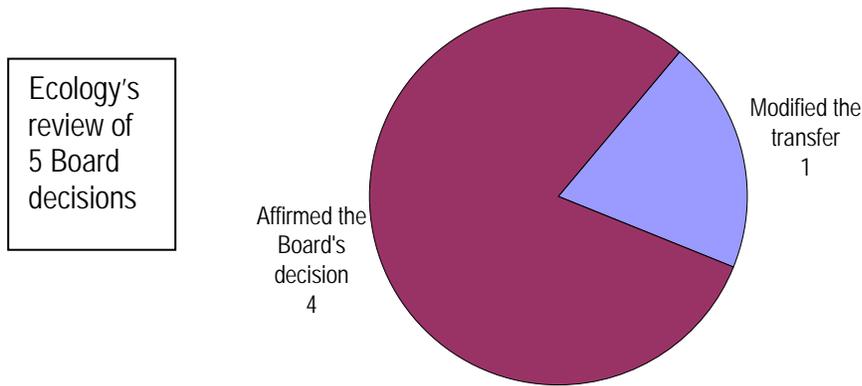
*Public support:*

Lincoln County provided one-time grants of \$2600 and \$2000 to assist the Board. The County also provides the Board with management of Board finances and allows the Board to use meeting space and the use of an office for file storage, at no charge.

*Other support:*

None.

Review of Lincoln Board Decisions



*Number of appeals:* Two, to the Pollution Control Hearings Board. An appeal by third parties was dismissed; the appeal by an applicant resulted in a settlement agreement.

Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 399 days    Median: 336 days    Range: 277 – 679 days
- Number of days between the Board's acceptance of an application and Ecology's decision:  
Average: 443 days    Median: 381 days    Range: 287 – 719 days
- Number of times the Board withdrew its decision from Ecology: 1 of 5 decisions
- Number of times Ecology took the 30-day extension: 0 of 5 decisions

Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 3 of 5 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:<sup>50</sup>  
-- 1 of 5 transfer approvals



**Mason County Water Conservancy Board**

Snapshot as of April 1, 2004

**About the Mason Board**

- *Began operation in:* September 2002.
- *Number of Board members:* 5.
- *Board meeting place:* Mason Conservation District meeting room.
- *Fee charged by the Board:* \$800 (includes \$100 that is non-refundable). The Board will pay for publication of the public notice using the fee.
- During its tenure, the Mason Board has not yet accepted any applications nor issued any decisions.<sup>51</sup>

**The Work of the Mason Board**

- |  |  |
|--|--|
| <i>Who drafts the public notice?</i>               | The Board plans to do this.                |
| <i>Who drafts the Report of Examination (ROE)?</i> | The Board plans to do this.                |
| <i>Does Ecology review the draft ROEs?</i>         | Yes, the Board will ask for such a review. |

**Board Support**

- |                        |   |
|------------------------|---|
| <i>Staff support:</i>  | Board contracts with a person with the Conservation District for administrative assistance.   |
| <i>Public support:</i> | Mason County provided the Board with a \$5000 grant at the Board's inception. The Board has use of the Conservation District meeting room at no charge. |
| <i>Other support:</i>  | None.   |



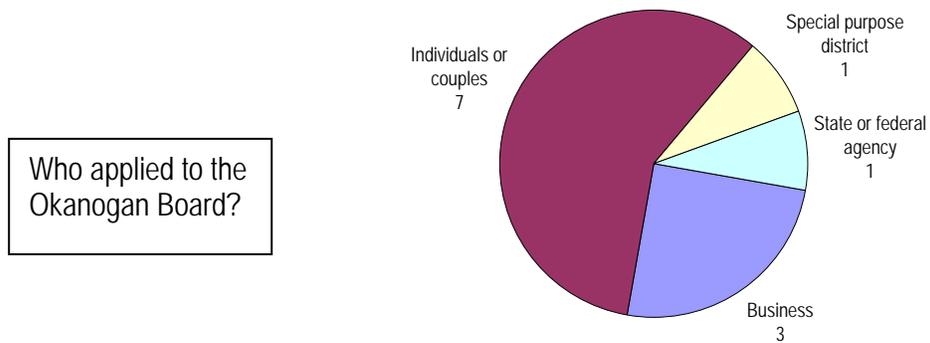
Okanogan County Water Conservancy Board

Snapshot as of April 1, 2004

About the Okanogan Board

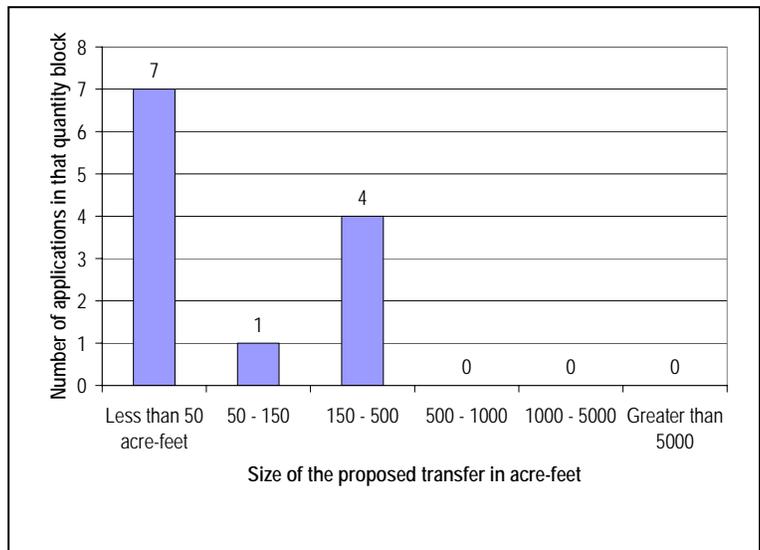
- *Began operation in:* May 2000.
- *Number of Board members:* 5.
- *Board meeting place:* Okanogan County Commissioners' conference room.
- *Fee charged by the Board:* \$600 (\$100 filing and \$500 processing). The Board pays for publication of the public notice from the fee.
- During its tenure, the Okanogan Board has accepted 12 applications and has issued 6 decisions.

Applications to the Okanogan Board



- Individuals or couples filed the most applications in Okanogan County (7 of 12).
- $\frac{2}{3}$  of the applications involved surface water, while two additional applications were for transfers of surface water to groundwater.
- 5 of the applications were filed originally with the Board; 7 were moved over from Ecology's queue.
- The purpose of use in most applications was irrigation to irrigation (10 of 12).

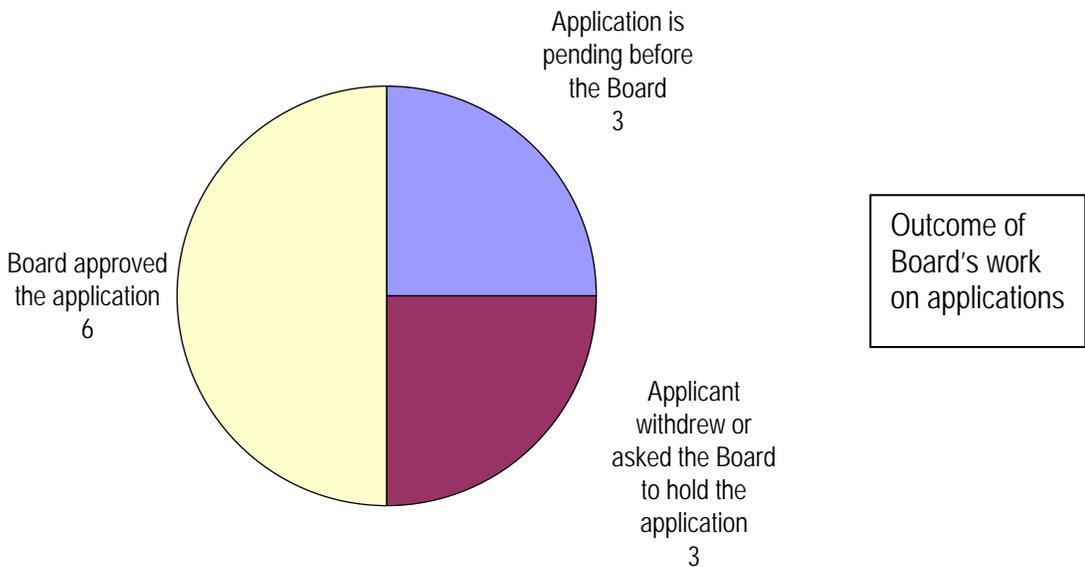
Applications to the Okanogan Board were mostly for smaller quantities of water:



The Work of the Okanogan Board

Number of Board decisions, by calendar year

- 3 decisions in 2003
- 3 decisions in the first quarter of 2004



*Who drafts the public notice?* Board members.

*Who drafts the Report of Examination (ROE)?* Board members.

*Does Ecology review the draft ROEs?* Yes.

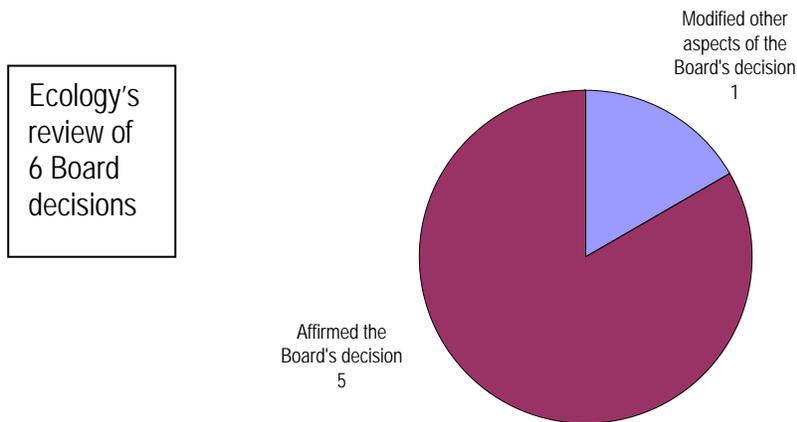
Okanogan Board Support

*Staff support:* None.

*Public support:* Initial donation of \$5000 from the County, which was used for training expenses for Board members and county staff; use of the County Commissioners' conference room at no charge.

*Other support:* None.

Review of Okanogan Board Decisions



*Number of appeals:* None.

Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 112 days    Median: 77 days    Range: 63 – 301 days
- Number of days between the Board's acceptance of an application and Ecology's decision:  
Average: 151 days    Median: 116 days    Range: 96 – 344 days
- Number of times the Board withdrew its decision from Ecology: 1 of 6 decisions
- Number of times Ecology took the 30-day extension: 0 of 6 decisions

Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 5 of 6 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:  
-- 0 of 6 transfer approvals



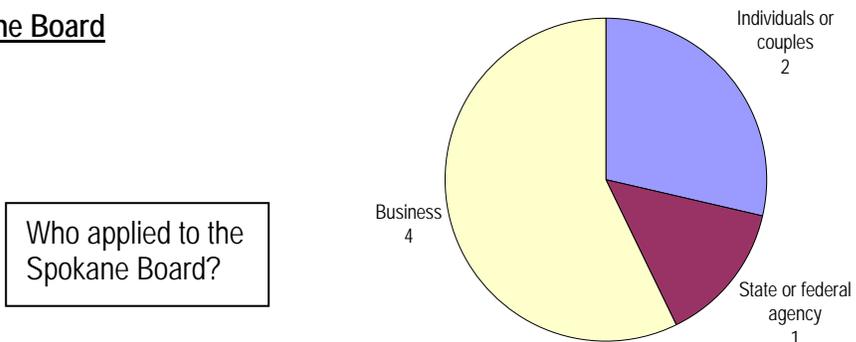
**Spokane County Water Conservancy Board**

Snapshot as of April 1, 2004

About the Spokane Board

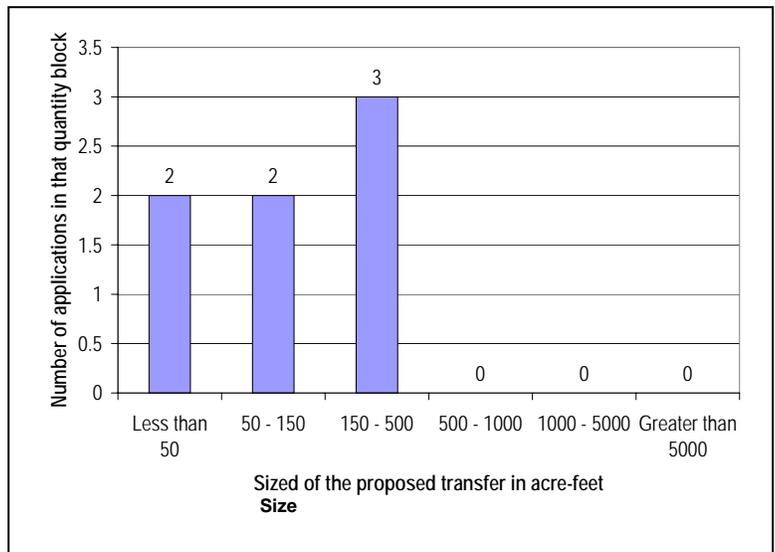
- *Began operation in:* May 2000.
- *Number of Board members:* 3.
- *Board meeting place:* Conference room of a local utility company.
- *Fee charged by the Board:* \$500 (\$100 application fee; \$400 processing fee). The applicant pays for publication of the public notice in addition to the Board fee.
- During its tenure, the Spokane Board has accepted 7 applications and has issued 4 decisions.

Applications to the Spokane Board



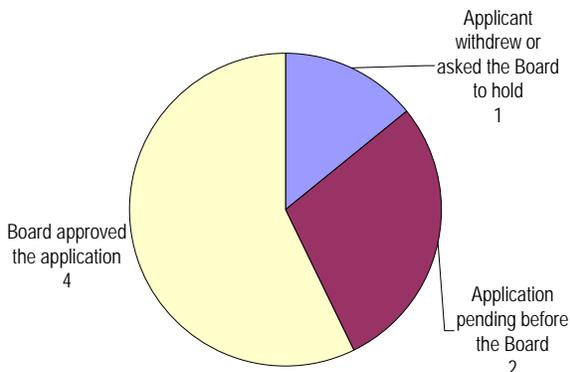
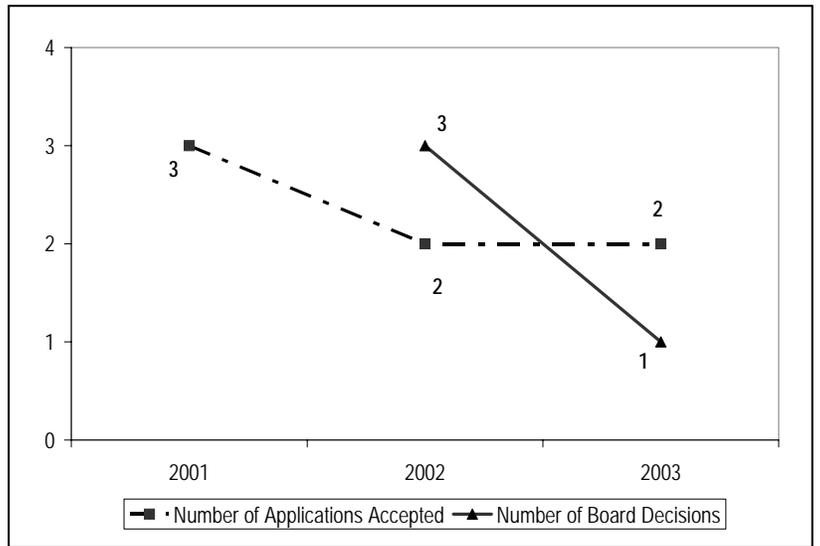
- Businesses filed the most applications in Spokane County (4 of 7).
- 6 of the 7 applications were for groundwater transfers; 1 for surface water.
- The Board reports that its applications generally come from Ecology's queue rather than being filed originally with the Board.
- The Spokane Board's applications involve a wide mix in purpose of use.

Applications to the Spokane Board were mostly for transfers of smaller quantities of water:



The Work of the Spokane Board

Number of Board applications and Board decisions, by calendar year



Outcome of Board's work on applications

*Who drafts the public notice?* A Board member.

*Who drafts the Report of Examination (ROE)?* The Board.

*Does Ecology review the draft ROEs?* Yes.

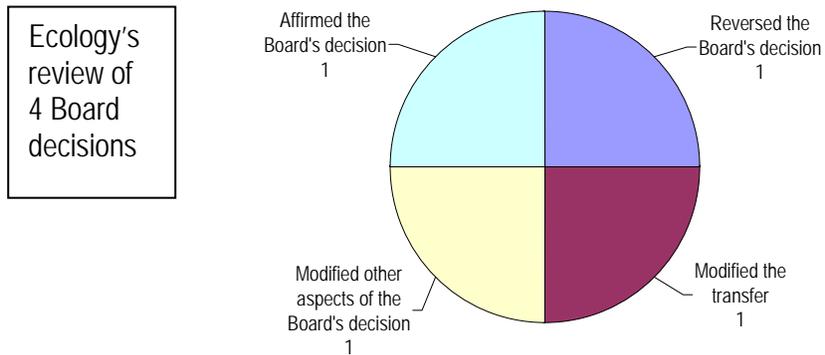
Spokane Board Support

*Staff support:* None.

*Public support:* Use of the utility company meeting space at no charge.

*Other support:* None.

Review of Spokane Board Decisions



*Number of appeals:* None.

Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 315 days    Median: 231 days    Range: 126 – 672 days
- Number of days between the Board's acceptance of an application and Ecology's decision:  
Average: 361 days    Median: 270 days    Range: 162 – 741 days
- Number of times the Board withdrew its decision from Ecology: 1 of 4 decisions
- Number of times Ecology took the 30-day extension: 1 of 4 decisions

Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 2 of 4 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:  
-- 0 of 3 transfer approvals    [Note Ecology issued one reversal]



Stevens County Water Conservancy Board

Snapshot as of April 1, 2004

About the Stevens Board

- *Began operation in:* January 2002.
- *Number of Board members:* 5; considering changing back to 3 members with 2 alternates.
- *Board meeting place:* Stevens Conservation District meeting room.
- *Fee charged by the Board:* \$500. The Board will pay up to \$200 towards one publication of the public notice using the fee; applicant is responsible for paying for any publication costs exceeding \$200 or any subsequent publications of the notice.
- During its tenure, the Stevens Board has accepted 2 applications and has issued 2 decisions.

Applications to the Stevens Board

- Two individuals or couples filed the two applications in Stevens County.
- Both applications were for transfers of surface water.
- Both applications were filed originally with the Board rather than moved over from Ecology's queue.
- The purpose of use in one application was irrigation to irrigation; the second was a transfer from irrigation to irrigation plus trust water.
- The quantity of water proposed for transfer was within the 50 – 150 acre-foot range for one application; the total acre-feet requested for transfer was not specified on the other application.

The Work of the Stevens Board

Number of Board applications and Board decisions, by calendar year

The Board accepted its two applications in 2003 and issued its two decisions that same year.

Outcome of Board's work on applications

The Board approved both applications.

*Who drafts the public notice?* The Board.

*Who drafts the Report of Examination (ROE)?* The Board.

*Does Ecology review the draft ROEs?* Periodically, as needed.

### Stevens Board Support

*Staff support:* None.

*Public support:* The Board received two donations from Stevens County to help with Board start-up and training expenses. The Board has the use of the Conservation District meeting room at no charge and may also make use of some County meeting rooms if needed, at no charge.

*Other support:* None.

### Review of Stevens Board Decisions

Ecology's review of 2 Board decisions

Ecology reversed one Board decision and modified other aspects of the Board's second decision.

*Number of appeals:* One, to the Pollution Control Hearings Board. An appeal by the applicant of Ecology's reversal is pending before the PCHB.

### Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
*Not calculated for Boards with two or fewer decisions.*
- Number of days between the Board's acceptance of an application and Ecology's decision:  
*Not calculated for Boards with two or fewer decisions.*
- Number of times the Board withdrew its decision from Ecology: 1 of 2 decisions
- Number of times Ecology took the 30-day extension: 2 of 2 decisions

### Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 0 of 2 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:  
-- 0 of 1 transfer approval [Note Ecology issued one reversal]

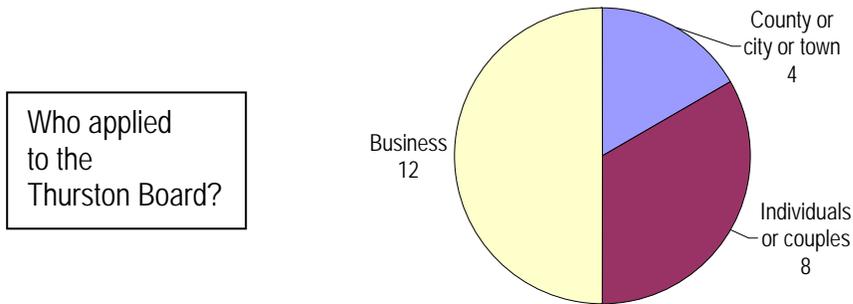
**Thurston County Water Conservancy Board**

Snapshot as of April 1, 2004

**About the Thurston Board**

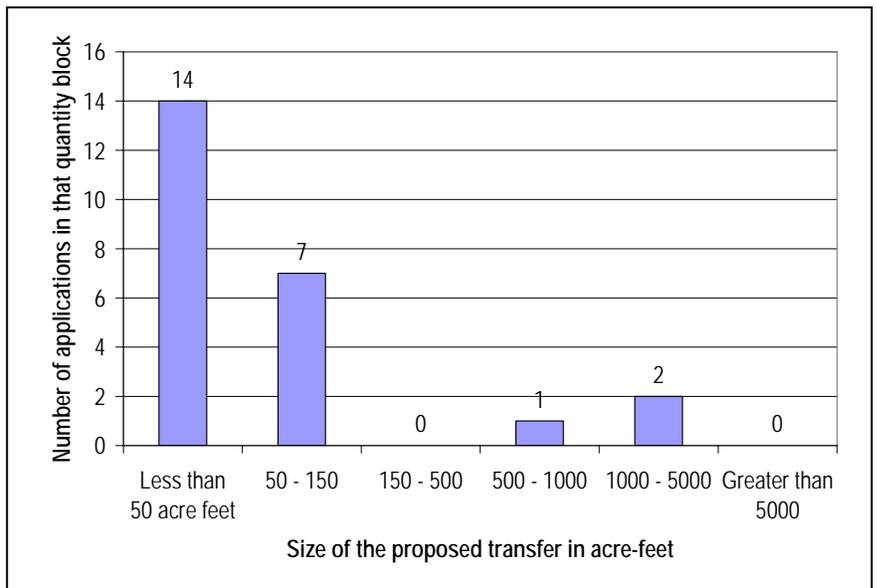
- *Began operation in:* November 1999.
- *Number of Board members:* 5.
- *Board meeting place:* Conference room associated with private office of one of the Board members.
- *Fee charged by the Board:* \$1450 (\$300 acceptance fee; \$1150 processing fee). The Board pays for publication of the public notice using the fee.
- During its tenure, the Thurston Board has accepted 24 applications and has issued 13 decisions.

**Applications to the Thurston Board**



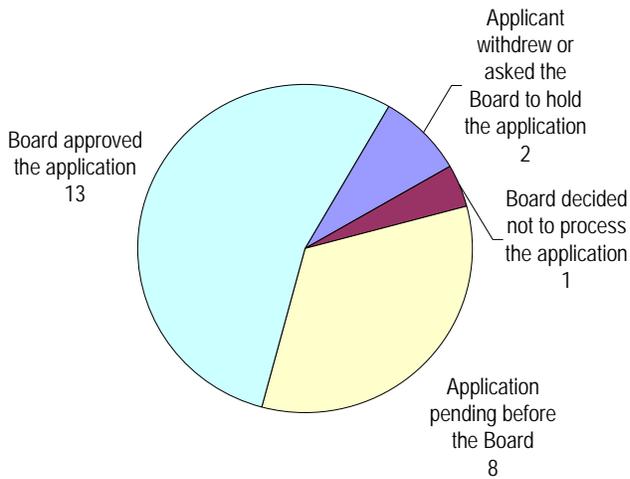
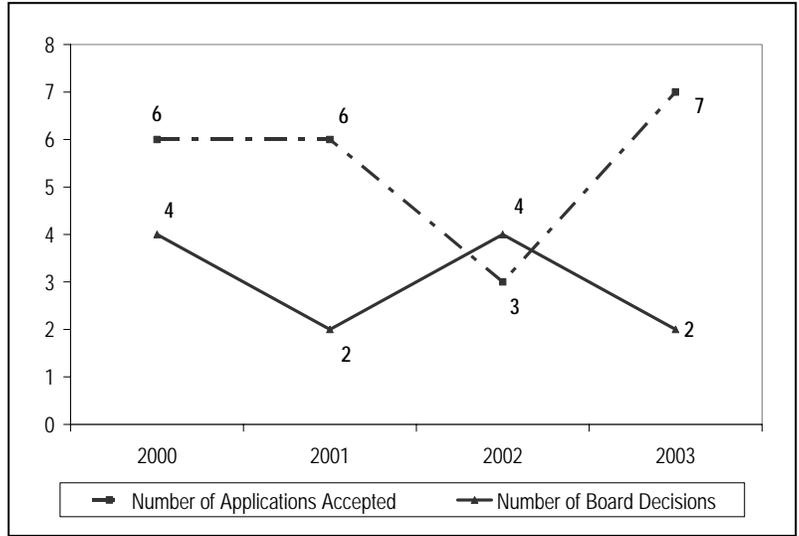
- Businesses filed the most applications in Thurston County (12 of 24).
- All of the proposals involved groundwater, two being proposals for transfers of surface to groundwater.
- 20 of the applications were filed originally with the Board; 4 were moved over from Ecology's queue.
- The most frequent change in purpose of use was from irrigation to municipal or domestic (8 of 24).

Applications to the Thurston Board were mostly for transfers of smaller quantities of water:



The Work of the Thurston Board

Number of Board applications and Board decisions, by calendar year



Outcome of Board's work on applications

*Who drafts the public notice?*

A Board member.

*Who drafts the Report of Examination (ROE)?*

Board estimates that 50 to 60 percent are first drafted by the applicant's representative; 40 to 50 percent are originally drafted by Board members.

*Does Ecology review the draft ROEs?*

Have in the past but Board is not requesting this now.

Thurston Board Support

*Staff support:*

None currently (had some secretarial support in the past and plan to again in the future).

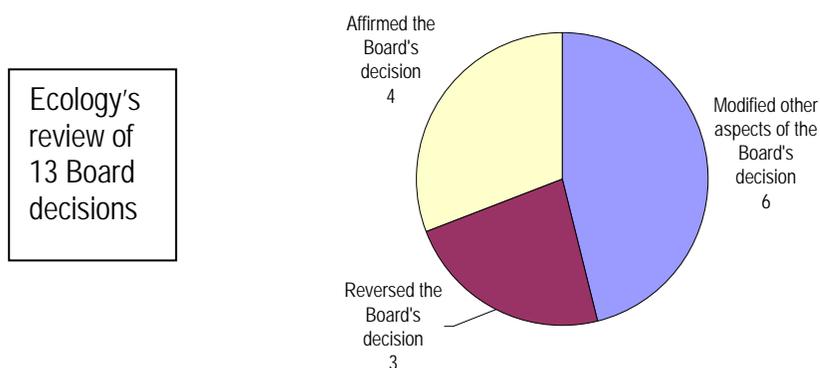
*Public support:*

None.

*Other support:*

Use of meeting room and tape recorder in private office of one of the Board members.

Review of Thurston Board Decisions



*Number of appeals:* One, to the Pollution Control Hearings Board. Applicant appealed Ecology reversal of Board approval of a transfer; settlement involved moving water into trust status for 20 years.

Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 280 days    Median: 211 days    Range: 71 – 574 days
- Number of days between the Board's acceptance of an application and Ecology's decision:  
Average: 319 days    Median: 246 days    Range: 112 – 616 days
- Number of times the Board withdrew its decision from Ecology: 1 of 13 decisions
- Number of times Ecology took the 30-day extension: 3 of 13 decisions

Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 1 of 13 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:  
-- 0 of 10 transfer approvals    [Note Ecology issued three reversals]



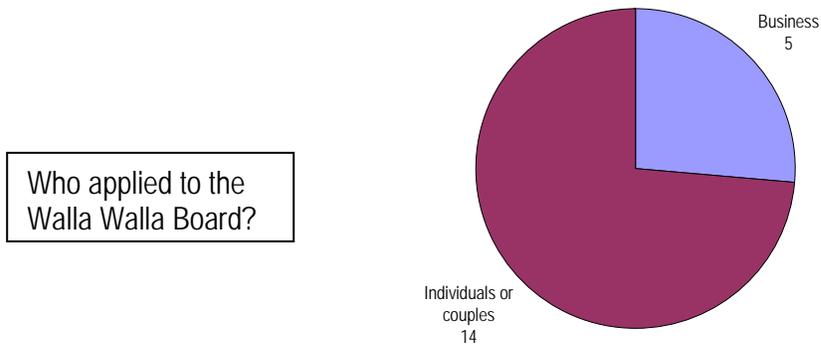
## Walla Walla County Water Conservancy Board

Snapshot as of April 1, 2004

### About the Walla Walla Board

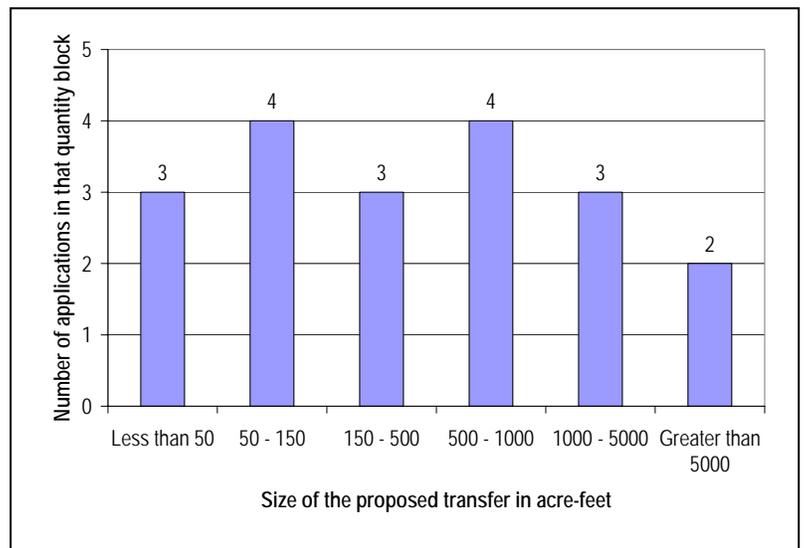
- *Began operation in:* October 1999.
- *Number of Board members:* 3.
- *Board meeting place:* Walla Walla County Commissioners' hearing room.
- *Fee charged by the Board:* \$500 (\$100 to review; \$400 to process). The Board pays for the publication of the public notice from the fee.
- During its tenure, the Walla Walla Board has accepted 19 applications and has issued 12 decisions.

### Applications to the Walla Walla Board



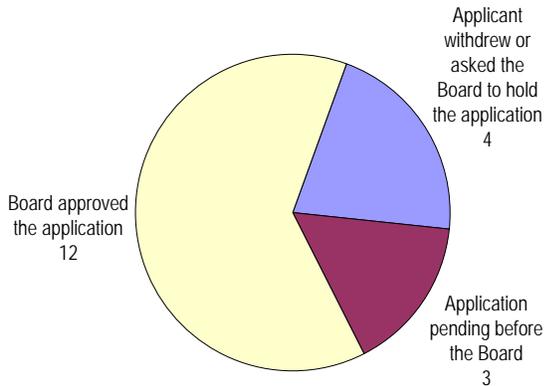
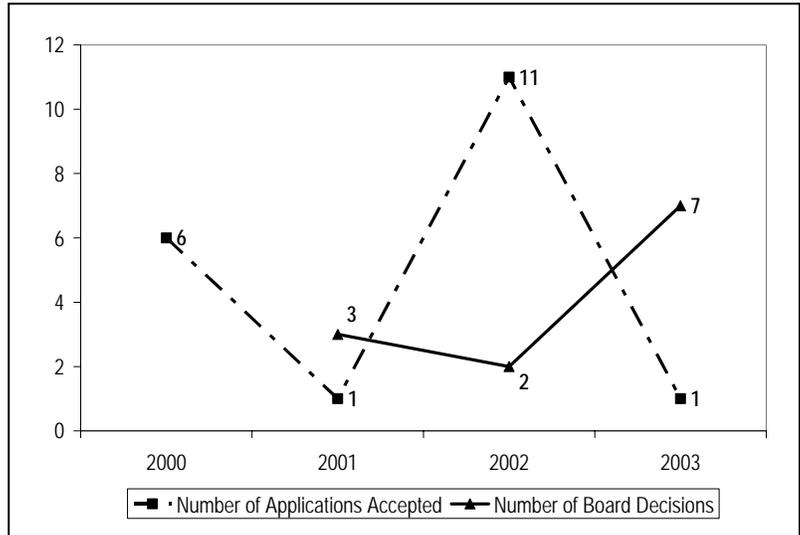
- Individuals filed the most applications in Walla Walla County (14 of 19).
- 12 of the applications involved groundwater transfers; 7 were for surface water.
- All but one of the applications were filed originally with the Board, rather than moved over from Ecology's queue.
- The purpose of use in most applications was irrigation to irrigation (15 of 19).

Applications to the Walla Walla Board included a wide range of water quantities:



The Work of the Walla Walla Board

Number of Board applications and Board decisions, by calendar year



Outcome of Board's work on applications

*Who drafts the public notice?*

A Board member.

*Who drafts the Report of Examination (ROE)?*

Originally the Board drafted all the ROEs. The Board is now leaning more towards having the applicant or the applicant's consultant draft the ROEs.

*Does Ecology review the draft ROEs?*

Yes.

Walla Walla Board Support

*Staff support:*

Some assistance from a clerk working at the County Courthouse, for example, responding to requests for forms and public information requests.

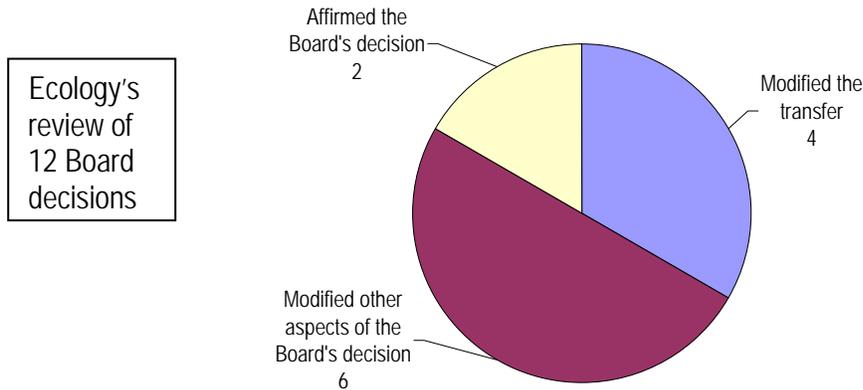
*Public support:*

Walla Walla County allows the Board to use its hearing room, to borrow some time from one of its clerks, and provides a fireproof storage space for Board records, at no charge.

*Other support:*

None.

**Review of Walla Walla Board Decisions**



*Number of appeals:* None.

**Length of the Decision-Making Process**

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 300 days    Median: 257 days    Range: 152 – 427 days
- Number of days between the Board's acceptance of an application and Ecology's decision:  
Average: 338 days    Median: 303 days    Range: 187 – 455 days
- Number of times the Board withdrew its decision from Ecology: 7 of 12 decisions
- Number of times Ecology took the 30-day extension: 2 of 12 decisions

**Water Quantity Reductions**

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 4 of 12 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:<sup>52</sup>  
-- 4 of 12 transfer approvals



**Whatcom County Water Conservancy Board**

Snapshot as of April 1, 2004

**About the Whatcom Board**

- *Began operation in:* December 1999.
- *Number of Board members:* 3.
- *Board meeting place:* Northwest Regional Council meeting room.
- *Fee charged by the Board:* \$750 (\$150 acceptance fee; \$600 processing fee). The applicant pays for publication of the public notice in addition to the Board fee.
- During its tenure, the Whatcom Board has accepted 2 applications and has issued 2 decisions.

**Applications to the Whatcom Board**

- One individual and one business filed applications with the Whatcom Board.
- One application involved surface water; the other, groundwater.
- Both applications were filed originally with the Board rather than moved over from Ecology's queue.
- The purpose of use of one application was irrigation to irrigation; the other, irrigation to an industrial park.
- Both transfer applications were for less than 50 acre-feet of water.

**The Work of the Whatcom Board**

Number of Board applications and Board decisions, by calendar year

The Whatcom Board accepted its two applications in 2002, and the Board issued its two decisions in 2003.

Outcome of Board's work on applications

The Board approved both applications.

*Who drafts the public notice?* The Board.

*Who drafts the Report of Examination (ROE)?* The Board.

*Does Ecology review the draft ROEs?* Yes.

**Whatcom Board Support**

*Staff support:* The Board contracts with the Northwest Regional Council for administrative support.

*Public support:* The Board received \$7500 in its first year from the Whatcom County Council; \$6000 per year in subsequent years.

*Other support:* None.

**Review of Whatcom Board Decisions**

Ecology's review of 2 Board decisions

Ecology modified some other aspect of the Board's decision in both cases.

*Number of appeals:* None.

**Length of the Decision-Making Process**

- Number of days between the Board's acceptance of an application and the Board's decision:  
*Not calculated for Boards with two or fewer decisions.*
- Number of days between the Board's acceptance of an application and Ecology's decision:  
*Not calculated for Boards with two or fewer decisions.*
- Number of times the Board withdrew its decision from Ecology: 0 of 2 decisions
- Number of times Ecology took the 30-day extension: 0 of 2 decisions

**Water Quantity Reductions**

- Number of approval decisions where the Board reduced the applicant's requested water quantity:
  - 1 of 2 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:
  - 0 of 2 transfer approvals

**Whitman County Water Conservancy Board**

Snapshot as of April 1, 2004

**About the Whitman Board**

- *Began operation in:* July 2000.
- *Number of Board members:* 5.
- *Board meeting place:* Whitman County Commission's meeting room.
- *Fee charged by the Board:* \$600 (\$300 acceptance fee; \$300 for processing). The Board pays for publication of the public notice from the fee.
- During its tenure, the Whitman Board has accepted 2 applications and has issued 1 decision.

**Applications to the Whitman Board**

- One individual and one business filed applications with the Whitman Board.
- One application involved groundwater; the other, a transfer from surface water to groundwater.
- Both applications were filed originally with the Board rather than moved over from Ecology's queue.
- The purpose of use in both applications was irrigation to irrigation.
- One transfer application was for less than 50 acre-feet of water; the other was in the 150 – 500 acre-foot range.

**The Work of the Whitman Board**

Number of Board applications and Board decisions, by calendar year

The Board accepted its two applications in 2001 and issued its one decision in 2002.

Outcome of Board's work on applications

The Board approved one application. The applicant withdrew the other application.

*Who drafts the public notice?*

The Board.

*Who drafts the Report of Examination (ROE)?*

A Board member drafted their first one; the Board predicts their members will draft their own ROEs in the future as well.

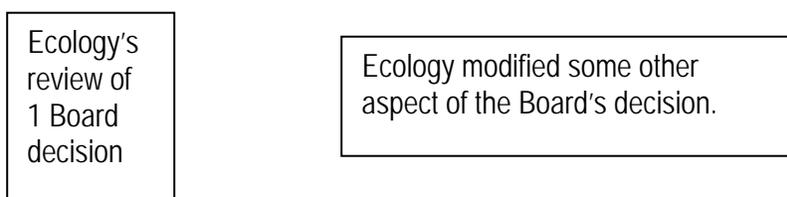
*Does Ecology review the draft ROEs?*

Yes; the Board will continue to ask for that review until they gain more experience.

### Whitman Board Support

- Staff support:* Board receives part-time clerical assistance from a clerk in the County Commission office.
- Public support:* County Commission allows use of a meeting room, part-time clerical assistance, and a place to store the Board's file cabinet of records, at no charge.
- Other support:* None.

### Review of Whitman Board Decisions



*Number of appeals:* None.

### Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
*Not calculated for Boards with two or fewer decisions.*
- Number of days between the Board's acceptance of an application and Ecology's decision:  
*Not calculated for Boards with two or fewer decisions.*
- Number of times the Board withdrew its decision from Ecology: 0 of 1 decision
- Number of times Ecology took the 30-day extension: 0 of 1 decision

### Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 0 of 1 transfer approval
- Number of Ecology decisions that reduced water quantity from the Board's decision:  
-- 0 of 1 transfer approval

**Yakima County Water Conservancy Board**

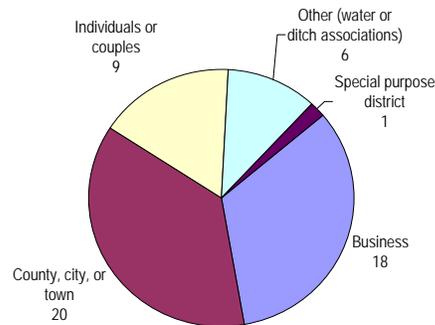
Snapshot as of April 1, 2004

About the Yakima Board

- *Began operation in:* July 1999.
- *Number of Board members:* 3.
- *Board meeting place:* Conference room in City of Yakima’s Public Works Building.
- *Fee charged by the Board:* \$600 (\$100 submittal fee; \$500 acceptance fee). The applicant drafts and pays for publication of the public notice in addition to the Board fee.
- During its tenure, the Yakima Board has accepted 54 applications and has issued 34 decisions.

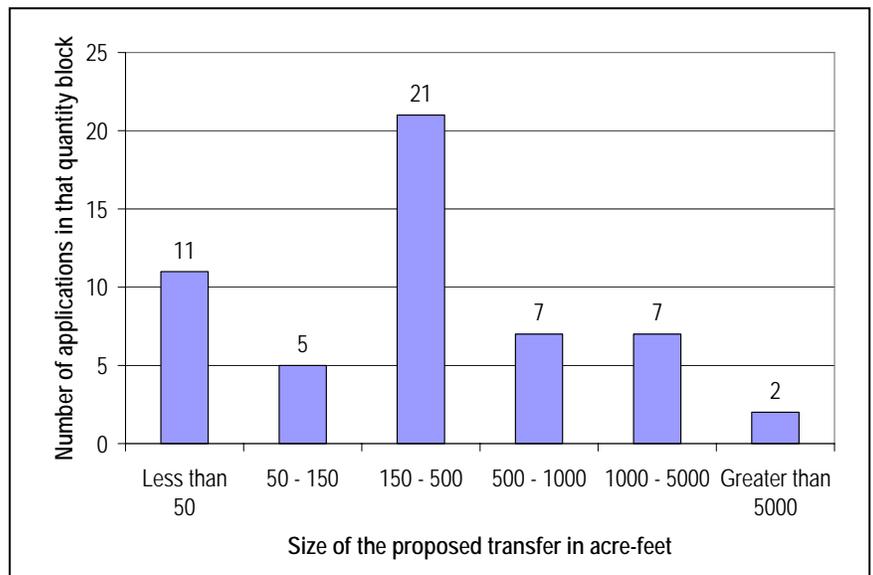
Applications to the Yakima Board

Who applied to the Yakima Board?



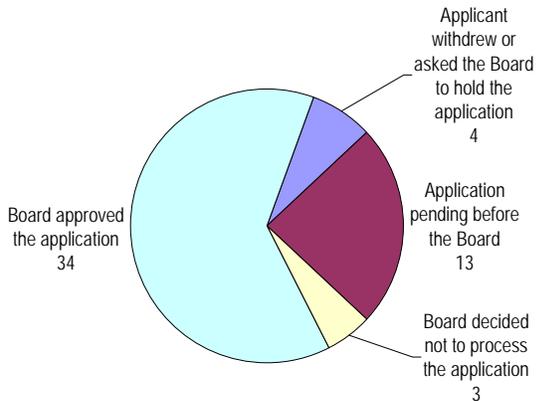
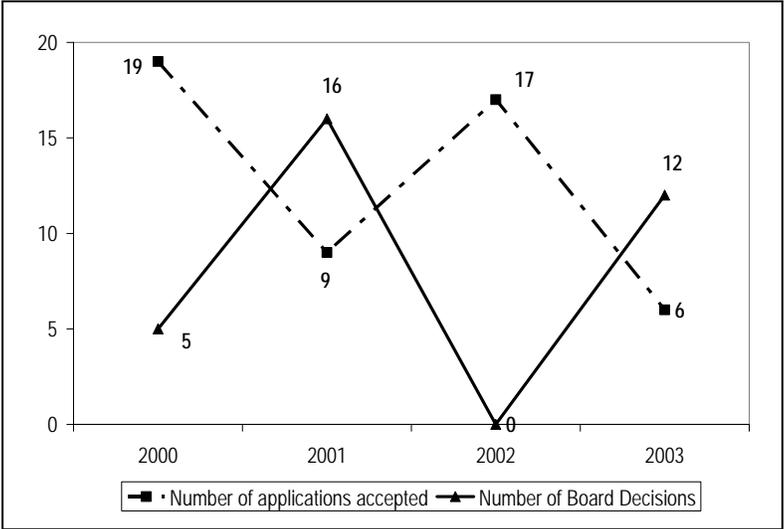
- Local governments and businesses filed the most applications in Yakima County (20 and 18 of 54).
- 48 of the 54 applications were for transfers of groundwater.
- 32 of the applications were filed originally with the Board; 22 were moved over from Ecology’s queue.
- Applications included a variety of purposes of use, including irrigation, dairy, industrial, and municipal.

Applications to the Yakima Board were mainly for transfers of small to medium-sized quantities of water:



The Work of the Yakima Board

Number of Board applications and Board decisions, by calendar year



Outcome of Board's work on applications

*Who drafts the public notice?*

The applicant or the applicant's representative.

*Who drafts the Report of Examination (ROE)?*

The applicant or the applicant's representative.

*Does Ecology review the draft ROEs?*

In some cases – the Board estimates about 20 percent.

Yakima Board Support

*Staff support:*

Board contracts with a person for secretarial support.

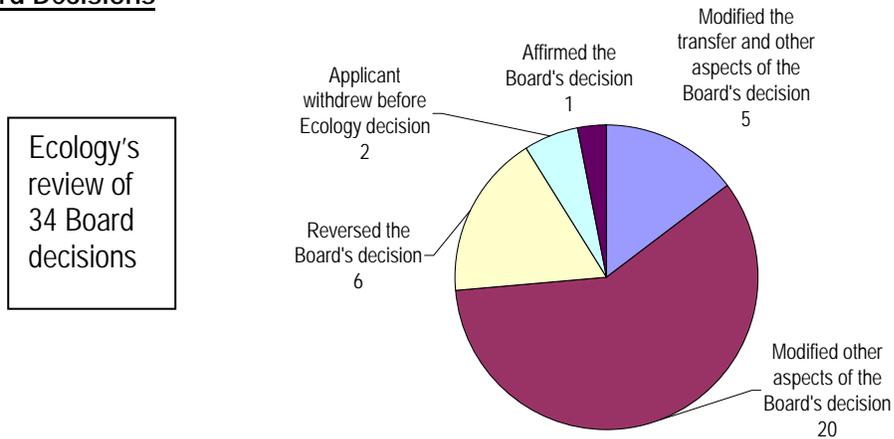
*Public support:*

\$5000 from Yakima County each year; use of the City of Yakima meeting space at no charge.

*Other support:*

None.

Review of Yakima Board Decisions



*Number of appeals:* Eight, to the Pollution Control Hearings Board. In two cases, the appeal was dismissed; Ecology reached a settlement agreement with the applicant on the other six applications.

Length of the Decision-Making Process

- Number of days between the Board's acceptance of an application and the Board's decision:  
Average: 221 days    Median: 119 days    Range: 21 – 645 days
- Number of days between the Board's acceptance of an application and Ecology's decision:<sup>53</sup>  
Average: 282 days    Median: 227 days    Range: 67 – 745 days
- Number of times the Board withdrew its decision from Ecology: 0 of 34 decisions
- Number of times Ecology took the 30-day extension: 16 of 34 decisions

Water Quantity Reductions

- Number of approval decisions where the Board reduced the applicant's requested water quantity:  
-- 5 of 34 transfer approvals
- Number of Ecology decisions that reduced water quantity from the Board's decision:<sup>54</sup>  
-- 1 of 26 transfer approvals    [Note Ecology reversed on six and an applicant withdrew two]



# APPENDIX 4 – VIEWS, CONCERNS, AND SUGGESTIONS FROM WATER CONSERVANCY BOARD MEMBERS

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A diverse set of individuals serve on the state’s water conservancy boards, and, not surprisingly, they have a diverse range of opinions about their work. To help illustrate this diversity and to provide legislators with the views of board members, below is a compilation of perspectives, concerns, and suggestions board members shared with JLARC staff during the interviews conducted for this project:

## **Board Views on State Statutes**

- Some boards have different interpretations than Ecology of certain state water laws, for example, with regard to “water spreading,” treatment of return flows, and the relationship between the water transfer statutes and the water relinquishment statutes [relinquishment refers to the reduction in water quantity from implementing the “use it or lose it” provision of western water law].
- Because of the state’s “use it or lose it” provision, water right holders have no incentive to save water.
- There should be a longer period in the relinquishment statutes, such as 20 years rather than five years.
- Boards would see many more applications if the state extended the relinquishment period.
- The provisions of the Open Public Meetings Act make it difficult for board members to conduct site visits together.

## **Board Views on Boards’ Role**

- Boards are advocates for the applicant and help protect applicants from Ecology.
- Boards do not act as an advocate for an applicant; boards are facilitating the process.
- Boards need to be objective, with some separation from the applicants.
- Boards are a place to get past historical conflicts between applicants and Ecology, and get applications processed.
- Boards provide applicants with an answer on an application. Even if that answer is “no,” applicants have clarity and can proceed accordingly.
- Many people feel more comfortable approaching a local board than approaching Ecology.
- It used to be that there were 60 Ecology permit writers and a few attorneys, and that was it in terms of people in the state who understood water law. Now there’s a cadre of informed, geographically-distributed people who are knowledgeable about water law.

- Having boards out there has motivated Ecology to process more transfers.
- Boards would not be needed if Ecology were doing its job.
- Board members are Ecology employees at no state expense.
- Boards should process applications for new water rights as well as transfer applications.
- Not sure boards should be in the business of processing applications for new water rights.
- It would be better for applicants in the long run to have the state do this job rather than boards.

### **Board Views on Ecology**

- Ecology should be a more neutral interpreter of the law, without promoting a particular view.
- Ecology is out to relinquish water.
- Ecology is more stringent now on what information is required to document beneficial use.
- Ecology's technical and other assistance has been really helpful.
- There is inconsistency within Ecology regions, between Ecology regions, and between what boards are told in training and what happens in the regions.
- Ecology should provide interim guidance on legislative changes before official policy is issued; currently, it is difficult for Boards to operate and issue decisions without direction.
- Boards sometimes have superior knowledge and information about the area under consideration in an application. Ecology should defer to local knowledge in these cases in the final decisions.
- The review process at Ecology takes too long.
- It's the Legislature's fault that Ecology processing has been too slow because of funding cuts.
- Two groups need mutual respect to work together, and that is missing right now between boards and Ecology. Ecology needs to serve as a teacher to the boards—not as an obstacle.
- Boards have a collegial relationship with Ecology.
- Ecology could choose to be more of a facilitator and a problem-solver rather than a gatekeeper.
- Ecology policy-making in Olympia is a mystery, a black box. Boards would like input into that process, and it would help if Ecology were more open and sharing about policy information.
- Ecology should have two separate units that process all the water conservancy board decisions, one unit on the east side and one on the west side. Performance evaluations of those units should be based on boards' views of how well the Ecology staff worked with the boards.

### **Board Suggestions for Process Improvements**

- It would help if boards could have more information at their fingertips: existing rights, mapping, etc.

- It would help if Ecology would provide boards with more templates, more standard operating procedures.
- It would help if Ecology would provide additional access to their hydrogeologists or to groundwater modeling data.
- If the state could resolve these old, huge claims for water rights, it would really streamline the process: look into some set period of time such as the last ten years and that's your water quantity; have the state offer some set nominal payment for old claims.
- The state could streamline (e.g., use a checklist for) the evaluation of transfer proposals for smaller quantities of water, where the water quantity is below some size threshold.
- The public notice should identify the place of use in a manner that is more understandable to the general public.
- The application format is too agriculture-based and should be revamped to consider broader uses.
- Boards should be under the umbrella of government service. This would relieve boards of insurance problems and provide predictable, dependable funding.
- The Pollution Control Hearings Board is often a difficult first option for an applicant's appeal. Applicants should have the opportunity for a rehearing before initiating a formal appeal; there should be some kind of opportunity for a board rebuttal to an Ecology decision.

### **Board Suggestions on Continuing Education**

- It is difficult for board members to travel long distances to attend board training. It would help if Ecology would come to the more distant boards and offer a training session once or twice a year.
- Use of the Internet for training would help board members save on travel expenses.
- It would be beneficial for board members to be able to repeat the initial training after they have gained some experience handling transfer decisions.
- Boards would like to receive an annual summary of changes to state water statutes and changes in law due to court decisions, either from Ecology or from the Office of the Attorney General.

### **Board Views on State Funding**

- The state should pay for board administrative and clerical assistance; the state should pay to offset board training-related expenses.
- The state should pay for board errors and omissions insurance.
- The state could offer state funds or grants to those boards that don't receive local funds or that need funds; some boards do not need this support.
- More resources would help such as assistance from a web-master for development of board websites.
- State funding is not the answer.

### **Board Views on Board Member Qualifications**

- Depending on where you are in the state, it can be difficult to find a board member who is a water right holder or one who isn't a water right holder.
- It really helps to have someone on the board with technical expertise, like an engineer. This should almost be mandatory.
- It helps to have a *mix* of expertise on a board, such as an attorney and an engineer.

### **Board Views on Errors and Omissions Insurance**

- Boards only make recommendations to Ecology on transfer applications and do not need the coverage of errors and omissions insurance for this role. They just need to do all the procedural steps correctly.
- Boards are concerned about this issue; they would like the protection of errors and omissions insurance but cannot afford it. Some boards charge higher application fees to cover operating costs.
- Boards have received different messages from their local officials about the extent to which they are covered under a county's existing insurance.
- Board members need protection from litigants. Some members have increased personal policies as means of additional protection.
- Boards who do not draft the report of examination themselves are unlikely to get sued.

### **Board Views on the Equity Issue**

- It is people who have the money and need the timely decision who currently apply with the boards. Boards aren't getting enough applications from the smaller-acreage farmers.
- Limited-income people are jeopardized by a requirement to have the applicant draft the report of examination.
- Having the state do this job rather than the boards would remove the consultants from the process and make the transfer option affordable to anyone.