Yakima River Basin Water Enhancement Project
Conservation Advisory Group

Process for Streamlining Water Transfers in the Yakima Basin

2001 - 2004

October 2005

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Review of the Process for Streamlining Water Transfers in the Yakima Basin

SUMMARY (OVERVIEW)

The Yakima Basin is home to the U.S. Bureau of Reclamation's Yakima Basin Project. The basin-wide Acquavella adjudication has been in process here for 27 years. In 2001, drought conditions threatened several thousand acres of high value agriculture. A flood of proposed water transfers threatened to overwhelm the state administrative and legal processes. The Conservation Advisory Group (CAG)[1], an existing watershed-wide stakeholder group, convened to facilitate the preparation, analysis, and processing of the emergency transfers. CAG developed guidelines and an informal "hearing" process to evaluate emergency transfers, winnow out the problems, and expedite approval by both the adjudication court and the state authorizing agency. CAG-reviewed drought transfers were well-received and uniformly approved by the state court and water agency.

This "pre-approval review" of water right changes was so successful that a new group, the Water Transfer Working Group (WTWG), formed to continue the CAG's work and expand it into permanent and non-drought transfer contexts. In 2002 through 2004, the WTWG addressed nearly one hundred permanent and temporary transfers and further refined its criteria and processes. WTWG-recommended transfers enjoy smooth approval processes.

In the future, the core functions of the WTWG will likely be incorporated into a larger basin-wide water bank. The WTWG provides the important functions of document preparation, water right research, impacts analysis, and coordination that are essential services for a smooth functioning water bank.

The WTWG experience illustrates several lessons:

- An experienced guide through the water transfer maze can save considerable time and money.
- An opportunity to informally "test" a proposed change among all the disparate interests in the basin and incorporate their feedback leads to a well-understood and easily-ratified transfer.
- Environmental benefits and mitigation for water right impacts can be fully evaluated and effectively designed in advance.
- A broad-based working group develops a unified vision of basin priorities, opportunities, and limitations, which in turn leads to fewer conflicts and better working relationships.
- Water can be moved quickly, with lower transaction costs and fewer impacts to the environment and other users.

[1] Members of the CAG at that time included Virgil Lewis Sr., Yakama Nation; Jim Trull, non-proratable irrigation districts; Ron VanGundy, proratable irrigation districts; Bob Stevens, WSU; Brent Renfrow, WDF&W; and Katherine Ransel, American Rivers.

BACKGROUND

Physical setting

The Yakima River Basin covers approximately 6,000 square miles (9,800 square Km) in south-central Washington. 1.90 million acres (770,000 hectares, 44%) are public lands, 776,000 acres (405,000 hectares, 18%) are Indian lands, and 1.67 million acres (524,000 hectares, 38%) are in private ownership. The Yakima Basin is bounded on the west by the Cascade Range and on the other three sides by semi-arid uplands. Topography is comprised of a series of long hilly ridges extending eastward from the Cascades that separate flat, fertile valleys. The Yakima River originates in the eastern Cascade crest (~8,500 ft / 2590 m AMSL), flowing over 200 miles (327 Km) southeast to its confluence with the Columbia River (350 ft / 105 m AMSL). Major tributaries include the Kachess (kuh-**chees**), Cle Elum (clee **el**-um), Teanaway (tee-**an**-a-way), and Naches (naa-**cheese**) Rivers. Average annual runoff is approximately 3.5 million acre-feet (Maf).

In the early 1900s, several states and regions courted the federal government to secure federal Reclamation projects under the then-new 1902 Reclamation Act. Washington State petitioned the Secretary of the Interior to develop the Yakima Basin, a site with great irrigation potential that had been only partially developed. Over the course of 30 years, the United States built the Yakima Basin Project (YBP), allocating water to the five Divisions of the Project - Kittitas, Tieton (**tie**-uh-ton), Sunnyside, Roza, and Kennewick, and to various other individuals and irrigation districts. In addition, the U.S. created the Wapato Division to serve lands in the Yakama Indian Nation. Eventually, over 500,000 acres were irrigated. Today, the primary agricultural products are hops, apples, mint, peas, honey, hay and other tree fruits. Wine grapes are a fast-expanding category.

The water supply for the YBP comes from natural surface water flow, storage, and return flow. In 1903, prior to the YBP, 70,000 acres were under irrigation, and the natural flow of the Yakima River was severely over-appropriated. The U.S. Bureau of Reclamation (Reclamation) built and continues to operate five storage reservoirs, which hold 1.07 Maf of water - Keechelus (**keh**-chel-us), Kachess, Cle Elum, Rimrock and Bumping lakes. The five Divisions of the Project and the Wapato Division each have their own diversion dams and pumping plants. Several small irrigation districts and individuals also divert from the Yakima River and its tributaries. Snow pack is often called the "sixth reservoir" because it stores a large delayed pulse of surface water. Return flow is an important part of the water supply, especially in the lower river in the mid-to-late irrigation season. About one third of the basin is under sprinklers, with the rest under flood furrow or rill application.

The comprehensive development of the Yakima Basin allows Reclamation to "operate the river" for the benefit of all users: irrigators, domestic users, fish and wildlife, power generators, and the public at large. The strategic location of five storage facilities high in the watershed allows Reclamation, within some limits, to manipulate the Yakima River's hydrograph, and creates a high degree of control and flexibility in project operations. The advantages conferred by the physical system are an important factor in the WTWG's success. Storage can create many opportunities for mitigation of diversion effects and "currency" for a functioning water bank based on water right transfers.

Water Allocation

Yakima River water users take natural flow, storage and return flow under federal contracts, a federal consent judgment, and state water rights. Reclamation operates the Yakima River Project to deliver water from all sources to federal contractors, senior appropriators, and other diverters. Users on the tributaries take their water under the requirements of state law.

At present, state water rights are in flux because of the Yakima-Basin-wide adjudication, Department of Ecology v. Acquavella, et al., in Yakima County Superior Court, (Acquavella). The Court is drawing near to the end of its work, and has issued Conditional Final Orders (CFOs) on many water rights, a significant step toward a certificate of adjudicated water right under Washington State law. Though a final decree is perhaps a few years off, water rights in CFO status are, in most cases, an excellent approximation of the final state water rights, and they are fully enforceable under state law.

Reclamation allocates and delivers water and regulates water users under the authority of federal contracts and under the Consent Judgment in Kittitas Reclamation District v. Sunnyside Valley Irrigation District (Civil 21, E. Dist. Wash., 1945)(1945 Judgment). The 1945 Judgment decreed "(t)he obligations of the United States to deliver water from the natural flow of the Yakima River, its tributaries, and from other sources . . ." The 1945 Judgment set up a unique allocation scheme for the Yakima basin. Early in the Project's evolution, Reclamation had wrestled with the problems of limited storage and unpredictable natural flow by "leveling the priorities" among the basin's water users. The broad policy was to deliver maximum benefits to all irrigators.

The 1945 Judgment captured this policy and formalized a two-tier system of water rights. Junior water rights, generally those associated with storage and the May 10, 1905 federal appropriation, are "proratable," i.e. susceptible of *pro rata* reduction in times of scarcity. Pre-project senior rights are "non-proratable" and cannot be interrupted or reduced until all the proratable rights are regulated to zero. Some divisions of the Project have water rights in both categories. Roza ID and Kittitas Reclamation District are wholly proratable. Sunnyside and Tieton Divisions are partially prorated.

In 1977, Reclamation formalized operating procedures that had for many years tracked the parameters laid out in the 1945 Judgment. Reclamation estimates the total water supply available (TWSA) in March of every year and forecasts the amount of prorationing, if any, that will apply for the coming irrigation season. TWSA is recalculated on a regular basis during the irrigation season and the prorationing updated. In this way Reclamation has institutionalized the equitable sharing of the available water supply among the competing irrigators in the basin, as the 1945 Judgment had envisioned. Though a final decree in the Acquavella adjudication will set quantities and priorities for the basin's water users, it will not completely supersede the administrative and operational aspects of the 1945 Consent Judgment.

Reclamation's basin-wide operational scheme, based on federal contracts and a federal consent judgment, is overlaid on the state law of prior appropriation. As a general proposition, only water rights with priorities junior to May 10, 1905, who were not part of the original Project and

were not recognized in the 1945 Judgment, are regulated under state law. Water rights senior to that date manage shortage by the unique federal system of pro rata sharing instead of the familiar state law of priority call and curtailment.[2] In addition to managing basin supplies for irrigation, Reclamation manages the Yakima River to meet treaty trust responsibilities and federal statutory flow targets at Parker dam and Prosser dam for the benefit of the basin's fish and wildlife. The Yakama Nation's time immemorial treaty fishery right is a primary operational parameter for Reclamation in the YBP. These operational considerations do not fit neatly within the state regulatory scheme.

Since the Yakima Project was fully developed, there has never been a water shortage that completely curtailed diversion by proratable users. Regulation of post-1905 priority water rights has historically been very relaxed, but that trend changed with a priority call through the Acquavella Court in 2001, a thirty seven percent proration year. That water short year engendered a temporary curtailment order from the court for all water rights junior to the May 10, 1905 priority of the proratable water users. It was hoped that the curtailment would make more natural flow available to senior users. In 2004, at the behest of proratable water users, the Acquavella Court entered a permanent order for curtailment of all post-1905 water users. By operation of state law, the curtailment is triggered when Reclamation begins to release stored water in water- short years.

Tighter regulation of unauthorized and out-of-priority water use has begun and is gaining momentum in the Yakima Basin. Clearer water quantifications from the Acquavella adjudication allow the newly-created state water master for the Yakima Basin to reduce unauthorized or out-of-priority use in all years. Ground water and project return flow have not been integrated into the regulatory scheme, but they will come under increasing scrutiny. Universal water measurement, diversion reporting and regulation will help stretch available supplies within the context of existing water rights.

Both State and Federal law apply to water use and transfers in the Yakima River Basin. For any given water right, there is a complex interplay of Federal and State jurisdiction, management, and regulation. Reclamation's operational scheme, based on the 1945 Consent Judgment, the 1855 Yakama Nation Treaty, and Washington State law will continue to guide water allocation and transfer decisions. Ironically, the complexity of the legal and management systems has contributed to the simplification of the transfer process. The Yakima Basin's mosaic of rules and interests requires transferors and potential objectors to be well-versed and thoroughly prepared. Complexity and diversity of perspective create a strong demand for a forum where the complicated aspects of a transfer can be hashed out in real time, in face-to-face meetings among knowledgeable experts. The alternative – agency reviews with written comments, protests, and litigation – has proved to be a dead end when time is of the essence.

GENESIS OF THE WATER TRANSFER WORKING GROUP

In late 1994, Congress passed Public Law Number 103-434, Title XII, known as phase two of the Yakima River Basin Water Enhancement Project (YRBWEP). It was designed to remedy two endemic problems of the Yakima Basin Project: severe degradation in salmon habitat and

[2] An exception is the set of individually confirmed, non Federal project water rights on Yakima River tributaries, which are managed under the state law of priority call and curtailment.

numbers of fish, and insufficient water supply for irrigation during dry years. The YRBWEP legislation addresses these problems by facilitating water conservation and other ways of making the water supply in the Yakima Basin more flexible and responsive to current needs. The legislation encourages technical and conventional measures, such as automation of water conveyance systems, lining and piping of water conveyance and distribution systems, on-district storage, tail-water recycling and improvements in on-farm water application systems. Some of the legislation's provisions call for more innovative ways to improve the water supply, such as water transfers, water banking, dry year options, and the sale and leasing of water among agricultural users and for instream flows.

To manage the anticipated technical and policy issues that arose from the YRBWEP legislation, the Congress created a Conservation Advisory Group (CAG), an approved Federal Advisory Committee Act (FACA) committee. Six members representing the interests of the Yakama Nation, the proratable and nonproratable irrigation districts of the YBP, the Washington State University Agricultural Extension Service, the Washington Department of Fish and Wildlife (WDFW) and environmental public interest groups were appointed by the Secretary of the Interior. Congress directed the CAG to provide various recommendations to the Secretary and to the state of Washington, on how to: structure and implement a basin conservation program; establish a permanent program to measure and report water use in the basin; structure a process to prepare a basin conservation plan; provide annual review of the Secretary's water conservation guidelines; and provide recommendations on rules, regulations and administration of a process to facilitate the voluntary sale or lease of water.

CAG completed all but one of the tasks Congress set before it. A CAG "water banking" report with recommendations on rules, regulations and administration to facilitate voluntary sale or lease of water is now being prepared. Over the last decade, CAG had taken up the water banking and water transfer topics, but for various reasons had not reached consensus on an approach or specific recommendations to the Secretary and the State of Washington. The 2001 drought, however, prompted action and brought CAG's past work on the subject to bear in a very focused and efficient way.

As reported in a Washington Department of Ecology (Ecology) publication:[3]

> As Washington began water year 2001 (Oct. 1, 2000, through Sept. 30, 2001), there was little reason to expect anything out of the ordinary. Climatologists had even predicted cooler, wetter-than-normal weather for the Pacific Northwest.
>
> While November and December 2000 were unusually dry, most experts assumed the typical heavy snow and rainfall levels would begin again in January 2001. Unfortunately, Washington's dry weather pattern continued through January and February, not returning to normal until March. The outlook for summer water supplies was turning bleak.
>
> By mid-March, nearly every corner of Washington was suffering a water supply deficit. The state depends heavily on abundant water to power its hydroelectric dams. Federal, state and local officials worried that low river flows would disrupt state energy

[3] WDOE Water Resources Drought Year Report, 2001

production. Dwindling water supplies put various threatened and endangered fish species at risk. The state also braced for severe economic strain on its agricultural, municipal and industrial sectors due to the drought.

On March 14, 2001, Gov. Gary Locke authorized the Department of Ecology to declare a statewide drought emergency. Washington was the first Northwest state to make a drought declaration, which formally expired on December 31, 2001.

At its March 15, 2001 meeting, convened to address the subject of water transfers and the drought, CAG quickly and cooperatively developed a set of very important criteria that set the parameters for water transfers[4]. CAG then crafted a process to apply these criteria to proposed emergency transfers, creating a "fast track" response for transfer requests in the 2001 irrigation season.

On March 28, 2001, a Working Group of the CAG began processing emergency water transfers. Representatives from Reclamation, Ecology, the Yakama Nation, U.S. Fish and Wildlife Service (USFWS), WDFW, National Marine Fisheries Service (NMFS)[5], and irrigation district representatives - Sunnyside Valley Irrigation District, Roza Irrigation District, and Kittitas Reclamation District participated in the Working Group. Each Working Group meeting was an open public meeting with a variety of interests, including private parties, represented.

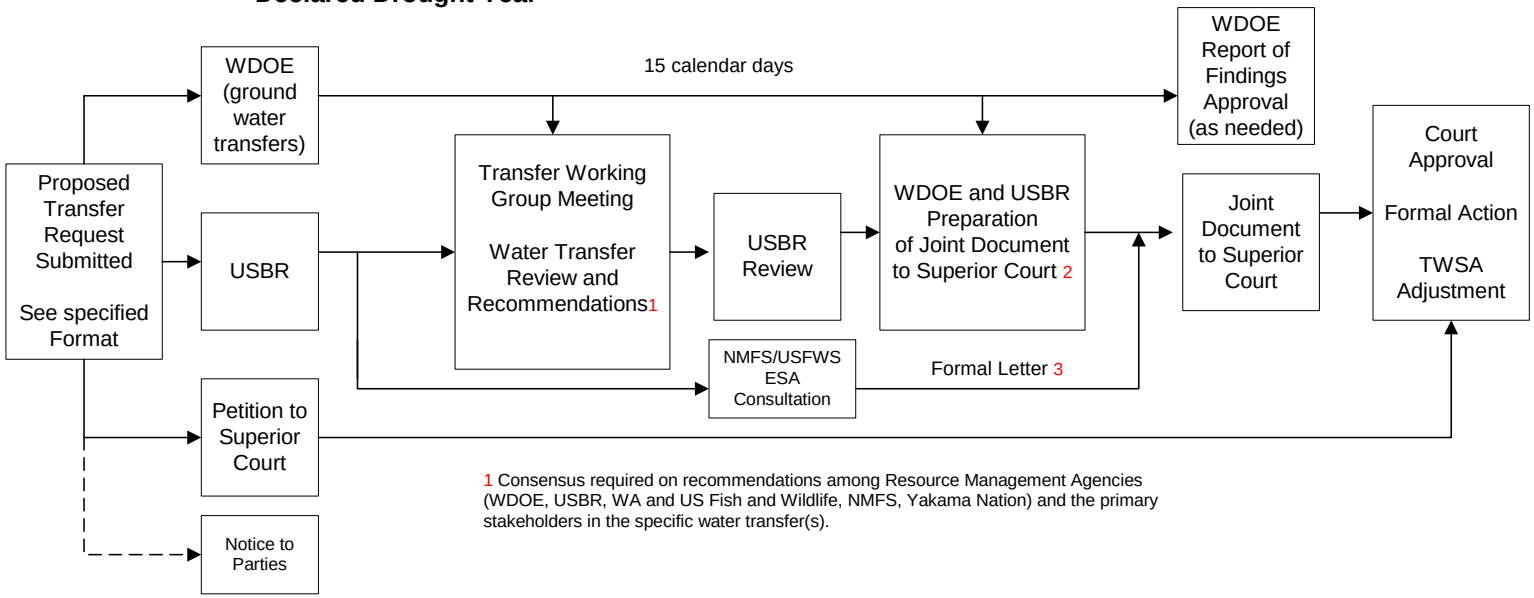
The Working Group "fast track" approval process has as its centerpiece the criteria for legally and operationally permissible transfers. These criteria were known as "the box", because they made up the boundaries within which any proposed transfer must fit to be treated in an expedited manner. The "box" criteria captured the concerns of all the stakeholders in the Yakima Basin. For a proposed transfer to stray outside of the box was to invite a protest at the agency or Acquavella Court level. The most recent "box" checklist is attached as Appendix 1 below.

The Acquavella Court, which has jurisdiction over temporary water transfers during the pendency of the water rights adjudication, agreed to use the review of the CAG Working Group as a primary input to the Order Pendente Lite transfer approval process. A flow chart for the 2001 drought year process is shown on page 7. The drought year process revised according to Pre-trial Order No. 12 (1/22/02), is included as an addendum to this report.

[4] CAG Meeting Minutes (3/15/01)
[5] Now NOAA Fisheries

Yakima Basin Temporary Water Transfer Process
Declared Drought Year

based on 2001 process and updated 1/21/02



1 Consensus required on recommendations among Resource Management Agencies (WDOE, USBR, WA and US Fish and Wildlife, NMFS, Yakama Nation) and the primary stakeholders in the specific water transfer(s).

"Best Case" Timeline

Week 1 | Week 2 | Week 3 | Week 4

The Water Transfer Working group will meet in a timely manner at the USBR office in Yakima to consider transfer requests. In 2001 these meetings were held on Mondays at 1:30 PM.

The group has established a preferred format for drought related water transfer requests. Adherence to this format will assist the group in processing requests in a timely manner.

Requests should be received not later than Tuesday of the week preceeding the Monday meeting to allow for pre-meeting review by Water Transfer Working group members. Request should be sent to the USBR Yakima Field Office Manager.

3 NMFS didn't see need to formally consult in the 2001 drought year transfers.

The semi-monthly notice will be published by WDOE's Referee's office on the 1st and the 15th of every month, while the transfer process is active.

USBR needs to submit entries to the Referee's office 5 days in advance of that date.

USBR deadlines are the 25th and the 10th of each month for submitting the semi-monthly notice entries to WDOE.

Court will consider proposals weekly as necessary or at the normal Water Day on the 2nd Thursday of each month.

2 Applicant may be requested prepare the proposed order to Superior Court and submit to WDOE/USBR for approval.

Along with the "box" criteria, the CAG Work Group developed a method to evaluate whether a proposed transfer was water budget neutral. The method developed was based on an analysis of crop consumptive use (CIR - crop irrigation water requirements) as defined by the Washington Irrigation Guide (WIG). The average year CIR quantities set out in the WIG were modified to reflect the serious drought conditions experienced in the Yakima River Basin in 2001.

2001 WATER TRANSFERS

Between March 28 and July 23, 2001, the CAG Working Group held sixteen meetings. Thirty of thirty one emergency drought year temporary transfers were reviewed and sent to the Court, which approved all thirty in Orders Pendente Lite. Few requests were made that were "outside the box", and the Working Group was able to modify most of those to comply with the approval criteria. The approved transfers totaled 23,039 acre-feet of consumptive use and 40,000 acre-feet of conveyance water, and 10,145 acres were fallowed. The Working Group approvals began in April and completed in July. The Court process issued the last Order Pendente Lite on August 2, 2001.

By comparison, 1994, the previous water-short year, saw only 3,739 acre-feet of consumptive use and 18,000 acre-feet of conveyance water transferred to the Roza Irrigation District, the largest proratable irrigation entity in the basin. In 1994, negotiations began in May and lasted through September. No private parties were involved in the 1994 water transfers.

The 2001 experience has several highlights:

- The fast track criteria and review process provided clear guidance to the development of transfer requests. Few requests were submitted that did not meet the criteria.
- Private attorneys and transfer proponents had more immediate and effective access to the Acquavella Court, which gave significant weight to the Working Group's recommendations.
- State, federal and tribal governments built a strong working partnership that included effective consultation with fish and wildlife agencies and irrigators.
- National Environmental Protection Act (NEPA) issues and their resolution were handled locally in Yakima rather than in far-off governmental enclaves.
- Water purchases and the available drought funding were creatively and cost-effectively brought to bear on the most pressing demands in the drought year.
- Instream flow leases, and leases for municipal use were handled through the same process with the same criteria.

Overall, the CAG Working Group's most important contribution was the blueprint for a decision making process, the "box." The CAG Working Group effectively managed the usually difficult issues of process, governance and authority, and moved directly into creating a rational, reproducible, and fair water transfer "clearinghouse." This group's previous shared experiences, collegial relationships, and shared perception of an emergency were critical factors in the birth of the Water Transfer Working Group.

NON-DROUGHT YEAR TRANSFERS - 2002 AND 2003

After the 2001 irrigation season, CAG reviewed and refined the drought year water transfer process[6]. In January 2002, CAG finalized the process and recommended that the Reclamation Yakima Field Office make use of it in future drought years[7]. CAG also reviewed the water transfer process' application to non-drought years and recommended a pilot program patterned after the "box" process that worked so well in the summer of 2001. A flow chart of the proposed non-drought year process is below. CAG also recommended the Reclamation Yakima Field Office as the appropriate lead agency for this pilot program. The pilot went forward in 2002 as the Water Transfer Working Group, a new group not directly affiliated with the CAG, though generally comprised of the same people as the 2001 CAG Working Group.

The administrative and legal context of full water supply years is different in many ways from a drought year. In short-supply years when the state's water supply is forecast to fall below seventy five percent and the water deficiency causes undue hardship to water users in a geographical area, Washington officially declares a drought (WAC 175-166-030 920, at seq.). This triggers two significant events: drought emergency money becomes available, and Ecology's transfer process goes into an "expedited" mode with fifteen day turnarounds on transfers. Similarly, the Acquavella Court expedites its docket in short water years to ensure the transfers take effect while they are still useful.

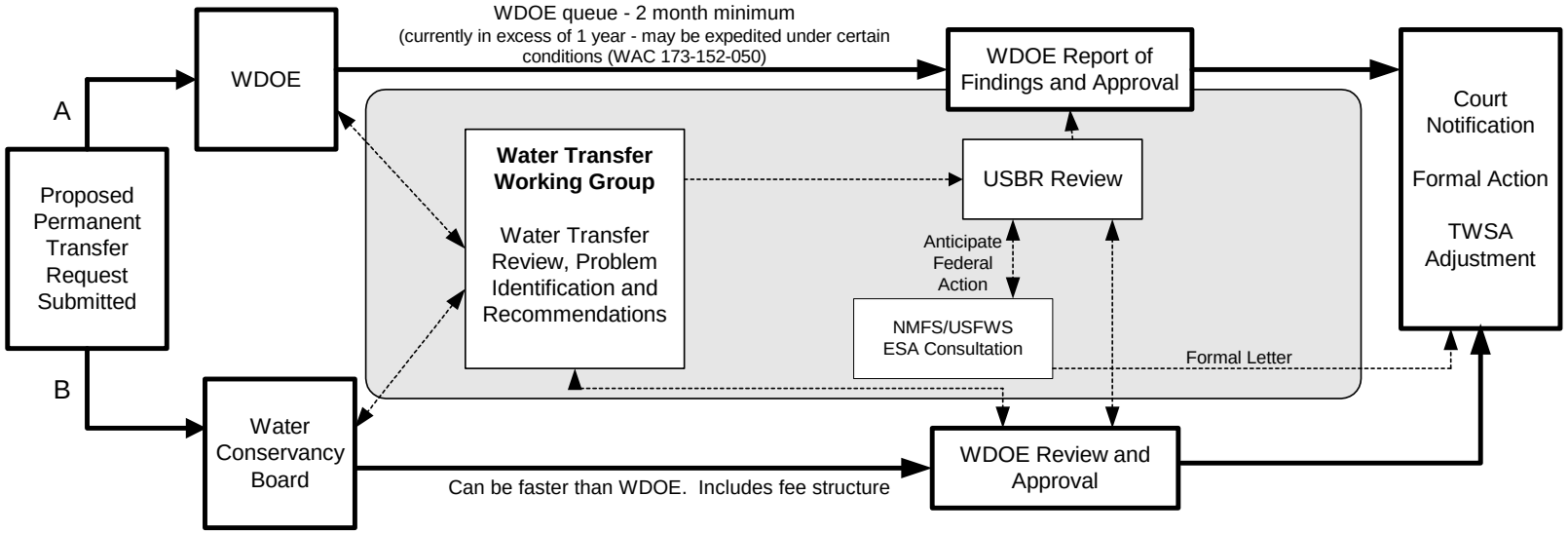
The full-supply year transfer process must proceed at a slower pace. The public review and due process requirements take a considerable amount of time. Public notice requires approximately sixty days from the time that Ecology receives the application and at least an additional thirty days once Ecology's Report of Examination issues. Transfer applications to Ecology are queued up behind pending transfer requests. Under certain conditions, Ecology can expedite its review (WAC 173-152-050) to remove the "waiting in line" requirement. If a transfer is submitted through a Water Conservancy Board, the waiting time can be significantly reduced, but public notice requirements are the same.

The WTWG review does not decrease public notice requirements in either the ECOLOGY or Conservancy Board process. The WTWG review does, however, reduce the time for resource management agency technical reviews and paves the way to more rapid approval by an open vetting of the transfer applications. The proposed pilot program was at first focused on temporary transfers. Many WTWG members felt that the rather long and cumbersome approval process for permanent transfers was appropriate.

[6] CAG Meeting Minutes (10/4/01)
[7] Yakima River Basin conservation advisory group report - Yakima River Basin water transfers – 2001 & 2002

Yakima Basin Surface Water Permanent Transfer Process Non-drought Year

based on 2001 process and updated 5/25/05



Permanent transfer requests may be submitted through the WDOE (A) or Water Conservancy Board (B) process. WDOE is not permitted to expedite transfer requests unless they meet criteria specified in WAC 173-152-050 (Hillis Rule). Water Conservancy Boards were established beginning in 1998 to expedite voluntary water transfers (RCW 90.80). The Conservancy Board process for transfer of a water right is defined in WAC 173-153.

The Water Transfer Working group will meet in a timely manner to consider transfer requests submitted through either WDOE, Conservancy Boards or the Adjudication Court. In a non-expedited process review, the group would primarily serve to identify potential problems and obstacles to the transfer.

Requests should be received not later than two weeks preceeding the Working Group meeting to allow for pre-meeting review by group members. Requests should be sent to the USBR Yakima Field Office Manager

Consensus is required on recommendations among Resource Management Agencies (WDOE, USBR, WA and US Fish and Wildlife, NMFS, Yakama Nation) and other primary stakeholders in the specific water transfer(s).

WDOE or the Water Conservancy Board will prepare and have the applicant publish the required Public Notices once a week for two consecutive weeks. Public Notice includes a 30 day protest period and WDOE/Conservancy Board review of public comments.

Court will consider proposals as necessary with Water Day on the 2nd Thursday of each month.

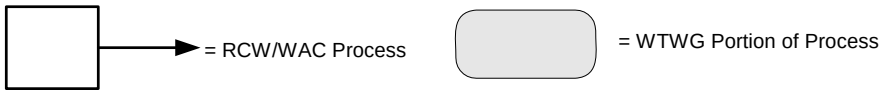
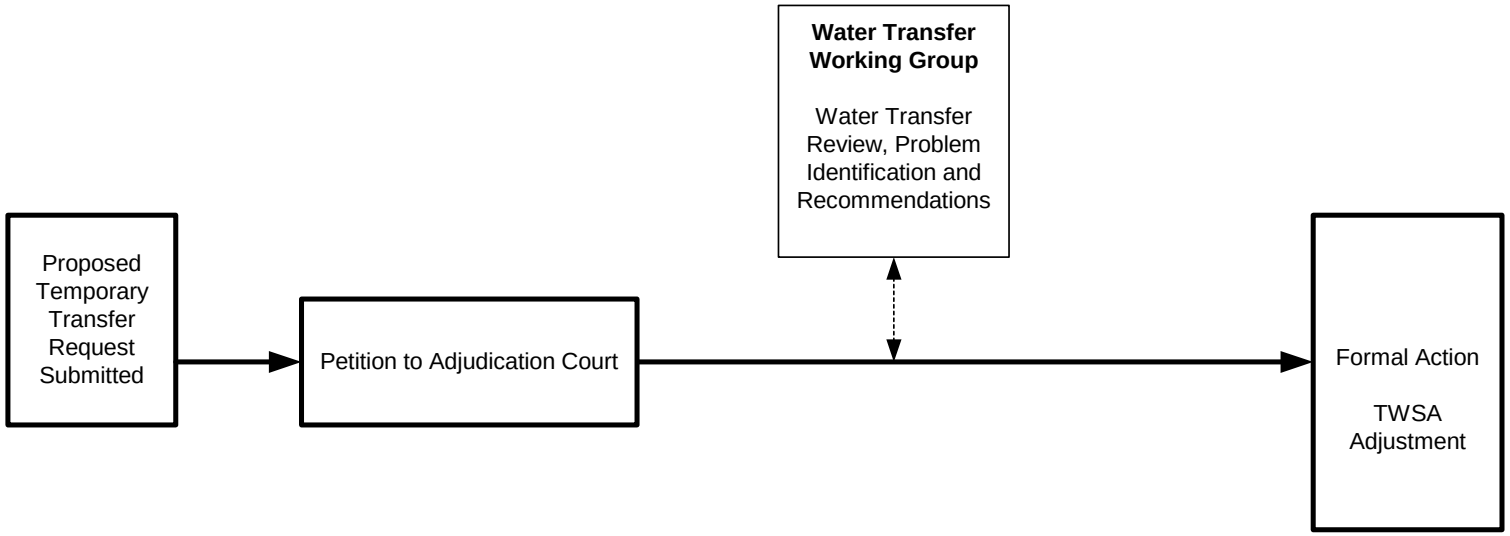


Figure 2

Yakima Basin Surface Water Temporary Transfer Process Non-drought Year

Updated to be consistent with Pre-Trial Order No. 12, dated 1/22/2002



Temporary transfer requests must be submitted though the Adjudication Court process under Pre-Trial Order No. 12.

The Water Transfer Working group will meet in a timely manner to consider transfer requests submitted through the Adjudication Court. In a non-expedited process review, the group would primarily serve to identify potential problems and obstacles to the transfer.

Requests should be received not later than two weeks preceeding the Working Group meeting to allow for pre-meeting review by group members. Requests should be sent to the USBR Yakima Field Office Manager

Consensus is required on recommendations among Resource Management Agencies (WDOE, USBR, WA and US Fish and Wildlife, NMFS, Yakama Nation) and other primary stakeholders in the specific water transfer(s).

Court will consider proposals as necessary with Water Day on the 2nd Thursday of each month.

Figure 2A

2002 Transfers

2002 was a normal water year and, as expected, produced few requests for temporary water transfers. At their only meeting, the Water Transfer Group discussed the Trendwest Resorts Water Rights Change applications to Ecology and some for Big Creek and the Teanaway River. Trendwest submitted some of these permanent transfer applications to the Kittitas County Water Conservancy Board. ECOLOGY reviewed and approved the Conservancy Board decisions with modifications. ECOLOGY included provisions in its approval of the applications regarding drought years, management and monitoring plans, protection of the TWSA, provision of water usage information and inspection.

As a result of the reviews, all parties arrived at court informed, avoiding lengthy extensions. The issues were known upfront. However, it would be appropriate to involve the WTWG earlier in the process rather than after the ECOLOGY approval had been given.

CAG generally agreed that temporary transfers in drought and non-drought years can be adequately handled through the transfer process used in the 2001 drought year. Under Pretrial Order No. 12, entered by the Court on January 22, 2002, ECOLOGY and the conservancy boards have no authority to process applications for temporary transfers and changes of surface water rights subject to Acquavella. Those requests have to be made to the Court directly through petitions for orders pendente lite. The above temporary transfer flow chart illustrates this process.

In contrast, for permanent transfers and changes, the proper process is for applications to be filed with ECOLOGY or a county water conservancy board. After agency approval, there is no specific need to seek the Court's approval, although any appeal would be made to the Court. The attached permanent transfer flow chart illustrates this process. CAG agreed that the Water Transfer Working Group should be involved in the permanent transfer process.

Permanent transfers for review would include transfers to the State Trust Water Program, upstream transfers, natural stream right with early priority date, operational issues, or a precedent setting transfer. The “In the Box” criteria developed by CAG still apply with a few modifications and clarifications.

The small number of transfers reviewed in 2002 did not contribute significantly to the lessons learned about non-drought year transfers.

- The number of transfer requests was small and the process was much more deliberate.
- The “in the box” criteria were still useful and provided clear guidance to the development of transfer requests.

2003 Transfers

In 2003, Ecology turned to the WTWG for assistance in order to address the alarming and long-standing backlog of proposed transfers in the Yakima Basin. These were permanent transfers that had been waiting for Ecology review, in some cases, for years. Ecology made a concerted effort to clear its backlog and began to issue Reports of Examination on the seventy one

applications "stuck" in the queue. This included a number of transfers proposed by the Washington Water Trust (WWT). The novel part of this effort was that Ecology incorporated the WTWG review into the water transfer process, provided administrative support and submitted well-presented proposals. The WTWG would evaluate pending transfers using the "box" criteria, identify problems, and make recommendations.

As the WTWG worked its way through the queue, the review process improved. The WTWG had a unique opportunity to process a variety of permanent transfers that raised the whole spectrum of water resource issues. The variety and challenges helped the WTWG evolve, clarified some ground rules, and improved the process dramatically.

Of the 71 transfers considered by WTWG in 2003, 31 were determined to meet the (in the box) criteria, 28 received No Recommendation, 4 were tabled pending more information and 9 were not considered for other reasons. The attached listing of 2003 WTWG transfers provides more detailed information.[8] The 2003 experience has several highlights:

- The "box" criteria were refined. A WTWG checklist was developed (Attachment 1)
- Jurisdictional boundaries were discussed and set.
- The group adopted rules of governance.
- Face to face meetings, while preferred, were not required. E-mail became a discussion tool and a way of voting.
- Partisanship and bias receded as participants began to anticipate and appreciate each other's perspectives and even make their arguments for them.
- The WTWG suggested mitigation strategies, multi-party deals, and other creative solutions that would make proposals "fit" into the "box."

The WTWG met face-to-face on eight occasions to consider transfers in 2003. The members of the group also served as the core group for discussion of water banking in the Yakima Basin. The October 2003 report on this discussion "Water Exchange in the Yakima Basin" as well as the subsequent Ecology 2004 Report to the Legislature on Water Banking can be found in the Internet at http://www.roundtableassociates.com/xfer/cag.htm.

At the end of the Ecology backlog effort, the WTWG had worked itself out of a job. The group made formal overtures to the Kittitas and Yakima County Water Conservancy Boards, offering to provide review and consultation for proposed conservancy board transfers. Neither Board accepted the offer.

2004 TRANSFERS

While not a declared drought year, the dry 2004 water year brought a number of challenges to water availability in the Yakima Basin. The emphasis was again on temporary transfers to move water to where it was needed.

[8] Additional detail on each of the 2003 transfers can be found on the Internet at http://www.roundtableassociates.com/xfer/transfers-2003.htm including descriptions of each transfer, its disposition and related notes from the WTWG meetings.

Of the 40 transfers considered, 14 were determined to meet the (in the box) criteria, 6 received No Recommendation, 11 were tabled pending more information and 9 were not considered for other reasons. Thirteen of the 40 had been submitted to Ecology for approval from Water Conservancy Boards (Kittitas and Yakima counties). Of these 13 transfers, 3 met the WTWG criteria, 5 received No Recommendation, 4 were groundwater related and 1 had been already acted on. The attached listing of 2004 WTWG transfers provides more detailed information.[9]

The WTWG met face-to-face on six occasions to consider transfers in 2004. Considerable discussion took place among the participants via e-mail. A number of discussions dealt with complex issues including use of conserved water, irrigating additional acres and Post 1905 priority water rights. Many of these discussions resulted in either a request for more information or a determination of No Recommendation (NR). The information provided on the Internet (http://www.roundtableassociates.com/xfer/transfers-2003.htm) for the 2004 transfers includes, where appropriate, a record of these e-mail and face-to-face discussion. To access this information click on **A** related to the specific transfer (or group of transfers) on the 2004 worksheet.

The 2004 experience had several highlights:

- The "box" criteria were continuously tested with a smaller number of transfers meeting the criteria (35% in 2004 vs. 44% in 2003).
- E-mail became a well-used and valuable discussion and voting tool.
- The WTWG meetings continued to be a valuable forum to discuss water reallocation issues. The discussions were open, inclusive and highly refined, dealing with specific (not theoretical) situations.
- Participants engaged in the discussion of more complex issues during the face-to-face meetings.
- The purpose of the WTWG and the outcomes of the discussions are not clear to all parties to the water transfer issues.
- The success of the process is highly dependent on the committed support of key agencies, irrigators and other stakeholders in Yakima Basin water.

2005 is a declared drought year and the drought year process used in 2001, as modified by the Court's Pre-trial Order No. 12, is in use as the water transfer process. A flow chart of the 2005 process is included as an addendum to this report.

[9] Additional detail on each of the 2004 transfers can be found on the Internet at http://www.roundtableassociates.com/xfer/transfers-2003.htm including descriptions of each transfer, its disposition and related notes from the WTWG meetings.

OBSERVATIONS ON THE 2003/2004 WTWG PROCESS

The following observations are a result of Roundtable Associates involvement in facilitating this and other water related processes in the Yakima Basin, Dar Crammond's documentation of his work with the WTWG in 2003/04 and interviews with a number of primary stakeholders in the process.

The initial Water Transfer Working Group was a sub-committee of the YRBWEP CAG formed to deal with temporary water transfers during the declared drought year in 2001. State law provides the ability to quickly process temporary transfers during a drought. This process and the role of the WTWG was documented in the March 2002 CAG Report on "Yakima River Basin Water Transfers - 2001 Drought Year and 2002 Pilot Transfer Process"[10]. In the intervening years, leading up to the drought declaration for 2005, the transfer streamlining provisions were not in effect and, as discussed elsewhere in this report, the WTWG position in the process was quite different. While the observations that follow may apply in any year, they are focused on the non-drought year experiences.

Outcomes/Expectations

A need was expressed to be clear about the outcomes expected from the process, i.e., a discussion forum, providing advice and comment but not a source of "official" water transfer approval. A primary object is to provide an analytical framework. State law is more permissive than the "box", e.g., spreading from fewer to more acres.

A comment by Kale Gullett, NOAA Fisheries in response to a proposed disclaimer statement seemed to communicate a good understanding of the role the WTWG – "…My attendance and participation in the WTWG process includes a review of all proposed transfers, and an evaluation of any potential effects to ESA-listed steelhead and Magnusan-Stevenson Act-Essential Fish Habitat for coho and chinook. I will make my concerns known if a transfer is proposed that includes identifiable negative effects to fish under NMFS jurisdiction. We should be able to avoid future transfer-related ESA issues with NMFS participation at the WTWG step in the process. Then again, isn't that really the intent of the WTWG--vet transfer according to WTWG criteria, seek WTWG approval, and largely avoid surprises in the court and elsewhere?'

"These transfers occur within the bounds of WA state law and the existing authorities and operational constraints of the (Reclamation's) Yakima Project. In short, they do not constitute a federal action subject to any of the sections of the ESA with which I'm familiar. If additional ESA review is necessary with regards to a given transfer, it is highly unlikely that said transfer would be before the WTWG in the first place--if said transfer does make the WTWG list, it will very likely fall outside of the box and die on the tables at the YFO Conference room. …"

[10] The report can be found on the CAG website at http://www.roundtableassociates.com/xfer/cag_report.htm.

Keys to WTWG success

The power of the WTWG is that it has no power. It operates in a voluntary and advisory capacity. It depends on:

- Quality of information
- Expertise of the participants
- Willingness of the participants to learn and listen
- No "boss"
- No "process"
- Long term relationships

Its anchors are:

- Adjudication – order pendente lite is a hot wire to the Court
- Federal agency – huge infrastructure, data, deep understanding, operational responsibility
- State Agency – understanding, legal/regulatory responsibility, cooperative relationship with federal agency

WTWG Process

Among those interviewed, the general consensus was that, while there were some concerns to be dealt with, the process works better than what was there before. The stakeholders, government and non-government, like the opportunity to look at transfers. The voluntary nature of the process is essential.

The benefits include an opportunity to get the experts in the room, identify problems early and expedite the process. The WTWG "core group" has developed good relationships and understands the Basin and its history. The discussions are open and highly refined – specific, not theoretical. Discussion sometimes gets a bit far a field, but it should in order to maintain an open forum. It is viewed as a very valuable forum to discuss water reallocation issues.

- "One of the best experiences over 3 – 4 state area"
- "A functional process (a refreshing change)"
- "It is a healthy process where we can see/hear all perspectives; however, but there is no guarantee of approval".

While the water people are finding their comfort zone, the attorneys seem uncomfortable there and are appearing more disenfranchised. It is a consensus process that needs facilitation.

An unsuccessful effort was made to involve the services of the WTWG early in the Conservancy Board review process. While 14 of the 40 transfers considered in 2004 had been approved through a Conservancy Board, they were submitted to the WTWG for review by Ecology as part of its approval process.

Comments relative to process details included:

- I would like to see more clarity on who brings the applications forward to the WTWG – Ecology or the applicant.
- Although the process is correctly open and inclusive, organizations with numerous representatives attending should make an effort to resolve internal differences prior to the WTWG face-to-face meetings.
- We should analyze transfer applications considered by the WTWG to determine whether the group should see all proposed transfers or were there some types where WTWG review was not needed. This analysis might lead to refinements the transfer descriptions or of the criteria.

Water Reallocation Issue Discussions

While considered valuable as a forum to discuss water reallocation issues there are concerns with the ability of the WTWG to deal with these issues. WTWG discussions raised issues from Reclamation and the Yakamas on Ecology transfers that don't fit in the box. Examples include water spreading, water or property rights, water as a commodity to be negotiated for, conserved water transfers, water banking, Post 1905 water right holders, etc.

WTWG discussions may not always result in a consensus view. In such instances, each agency can/should represent its opinion in the Court, reserving its right to challenge a transfer approval.. The smart lawyer will recognize the value of the "box' and the process and use the process to get things accomplished – make a business of it.

Comments were frequently voiced about the WTWG action to make No Recommendation (NR). NR has no consistent definition for its application. It could mean that the WTWG didn't have enough time, Ecology had already decided on its action, the issue was complex – geographically or legally - and more discussion was needed, there was time pressure to reach a conclusion, the group could not reach consensus, etc.

> An example of this would be the Selah-Moxee Post 1905 mitigation for effects on TWSA. The Selah-Moxee proposal did not mitigate for adverse reduction of streamflow in the tributaries (Teanaway). It came before the Court where the WTWG has no (legal) advocate. The WTWG had debated at length and reached some agreement but said No Recommendation which did not necessarily mean **Not** Recommended. The judge didn't hear the WTWG discussion of the subtleties and approved with no one in court to object.

The WTWG cannot recommend or deny approval of a transfer but needs to have a classification that captures "significant concerns." The No Recommendation category is needed as it permits parties to disagree and not feel pressured or attacked. Clear documentation of the reason for NR or "more info" should be available - especially the decisions and how they were arrived at.

Sustainability

Those who responded do not want to see the process institutionalized in a way that risks becoming a federalized and/or bureaucratic process. There is, however, concern as to what will happen when Acquavella ends.

Both Ecology and Reclamation leadership and support are critical to the sustainability of this review process.

The WTWG will have recognized value as long as the process produces a product that is credible. One definition of the WTWG product included "transfers of water with no net impact to both the system legally and hydrologically. The criteria (box) must be honored. The WTWG must help those proposing water transfers to understand how to succeed.

What may cause it to fail? Losing sight of where its power is derived - key people and relationships – and politics.

Future

The future is hard to predict. It is most likely to be one of evolution to meet the needs of the stakeholders. The WTWG has become a place where hard issues, such as water banking and Post 1905 orders, can be openly discussed.

The draft of this report was discussed at the May 11, 2005 Yakima River Basin Conservation Advisory Group (CAG) meeting in Yakima and approved the report at the October 26, 2005 meeting. CAG agreed that the process was effective and should be continued. Areas for further discussion included:

- Criteria for WTWG recommendation, referred to as the "box", with emphasis on non-drought years.
- Categories of WTWG recommendations, particularly the No Recommendation (NR) category.
- Level of detail in the information on why particular conclusions were reached by the WTWG.
- Provision of sufficient data in transfer applications.

WTWG "Box" Checklist [1]

1. **Validity**
   - Is the water right free of illegality or unauthorized use?
   - Is there continued beneficial use history sufficient to ensure that the right has not been forfeited or abandoned?
   - Is there a cloud on the title of the water right?
2. **TWSA Neutrality**
   - Is the transfer TWSA neutral?
   - Transfer of the right results in no increase in consumptive use?
   - Transfer has no impermissible impact on Yakima project operations?
   - Is all the water accounted for at Parker?
3. **Timing and Availability**
   - Can the transfer be implemented in the time remaining in the season?
   - Is the water available at the new and old POD in the same quantity at the same time?
   - Is there a map of the fallowed land or discontinued use and can it be confirmed?
4. **Impairment of instream flow**
   - Is the transfer neutral or a net benefit to instream flow?
   - Transfer has no impermissible impact on fisheries?
5. **Operational Considerations**
   - If the transfer relies on new storage, is storage capacity available?
   - Can the transfer be bucketed without impacts on other users or fish?
6. **Ground water and surface water sources**
   - Does the transfer involve a shift between the two sources?
   - Does the transfer rely on return flow?
   - Can the hydrologic impacts of the transfer be accurately evaluated?
7. **Other considerations**
   - Is the transfer contrary to public policy?
   - Does the transfer have unacceptable secondary effects - economic, environmental, or cultural?

[1] October 14, 2003

Attachment 2 – 2003 and 2004 Water Transfer Summaries

WTWG 2003 Proposed Transfers

Item	Item Batch	Due 3-Week	OK	Applicant	*Click on Number for Description* Applicant Number	Source	Instant (CFS)	Annual (AF)	Comments	*Click on Date for Notes* Meeting Notes
	2003									3/14/2003
1	1	25-Apr	OK	Dennis Burchak	CS4-YRB02CC00888	Fowler Creek	0.021 Irrig, 0.01 Stock	40.5		
2	1	25-Apr	X	Dennis Burchak	CS4-YRB02CC00889	Unnamed	.02 domestic	2	Originally checked but denied by WDOE after further investigation. The spring proposed as additional source periodically dries up.	7/21/2003
3	1	25-Apr	OK	David and Christine Leffert	CS4-CHVIII0PL18145	Naneum Creek	0.18 May-June 0.09 April and July - Oct 15	45.5		4/25/2003
4	1	25-Apr	OK	Carl and Karen Van Der Merwe	CS4-ADJ03VOL1-4P75B	Wenas Creek	>0.08	12		
5	1	25-Apr	OK	Mitchell Williams	CS4- WRC154349	Manastash Creek	0.069 April-Sept 0.036 July-Oct	21.84		
6	2	25-Apr	OK	WSDOE/BOR	CS4-07476CTCL	Wenas Creek	0.562 Mar-July 15	137.1		
7	2	25-Apr	OK	Penny Blackburn	CS4-YRB03CC1466	Teanaway River	0.88 May-Sept 15	287		
8	2	25-Apr	OK	Max Coleman	CS4-ADJ03COL1-4P60A	Wenas Creek	0.036 Apr-Oct 15	7.16		
9	2	25-Apr	OK	Penny Blackburn	CS4-YRB03CC2255@1	Teanaway River	0.04 May-Sept 15	10.8		
10	2	25-Apr	OK	Penny Blackburn	CS4-YRB03CC2255	Teanaway River	0.88 May-Sept 15	87.4		
11	2	25-Apr	OK	Penny Blackburn	CS4-YRB03CC1477	Teanaway River	0.88 May-Sept 15	98.5		
12	3	26-May	OK	Stephen Rosbach	CS4-00467CTCL	Caribou Creek	6.5 April-Oct	540		
13	3	26-May	NR	Zale and Diane Wood	CS4-ADJ03COL1-4P76B	Wenas Creek	0.12 Apr-Oct 15	18	If the applicant has been irrigating from an unauthorized well since 1987, is surface water right subject to relinquishment for non-use?	6/19/2003
14	3	26-May	OK	ESH Water Plant #4429X	CG4-28301P	Well	300 gpm	111		6/19/2003
15	4	9-Jun	NR	US Timberlands Yakima LLC	CS4-02206CTCL@1	North Fork Teanaway River (Dickey Creek)	0.52 cfs	105	WDFW was reported to be working out the issues surrounding these applications. The group agreed that the pending negotiation and other uncertainties put these two applications out of the box.	7/2/2003
16	4	9-Jun	NR	US Timberlands Yakima LLC	CS4-02206CTCL@2	North Fork Teanaway River	1.1 cfs	221	Checked but WDFW requested additional information 220 acre-ft/yr for irrigation of 55 acres, road watering, maintenance, fire protection, and 1 acre-foot for stock water	7/2/2003
17	4	9-Jun	NR	Wanda Fischer	CG4-24875C				At least 5 successive years of non-use of water without sufficient cause, under this certificate, relinquishment under RCW 90.14.160 applies. Ecology will deny this application.	7/2/2003
18	4	9-Jun	NR	John Ashbaugh	CG4-GWC421-D	A well	680 gallons per minute	350	Need application for 2nd certificate. Point of withdrawal issue. Resubmitted - see # 46	7/2/2003
19	4	9-Jun	NR	James Poisel	CS4-ADJ03VOL1-4P58	Wenas Creek	0.42 cfs	83.83	Unclear change in authorized use	7/2/2003
20	4	9-Jun	NR	James Poisel	CS4-ADJ03VOL1-4P88	Wenas Creek	1.148 cfs	229.6	Unclear use issues	7/2/2003
21	5	30-Jun	NR	Bugni Limited Family Partnership	CS4-YRB3CC01566	Teanaway River	1.52 cfs - May 1 to Sept 15	410.4	Complex issues - impairment, abandonment	7/2/2003
22	5	30-Jun	NR	Sky Meadows Ranch Country Club	CG4-27298C(B)	Wells	56 gpm	90.3	The YN had asked for more detail about the development scheme and its potential impacts. DOE pointed out that the new municipal uses provisions of the water code may foreclose any need to address this transfer in the traditional 90.03.380 process	8/21/2003
23	5	30-Jun	OK	John Feusner	CS4-ADJ03VOL1-4P39@1	Wenas Creek	0.8 cfm - Mar 1 to Oct 15	194.85	193.25 af/y for irrigation and 1.6 af/y for stock	8/21/2003
24	5	30-Jun	OK	USFS Wenatchee National Forest	CS4-SWC08676	Well	0.02 cfs	nd		7/2/2003
25	6	7-Jul	OK	Kim and Karen Braden	CG4-25336C	Well	88 gpm	40.2		7/2/2003
26	6	7-Jul	OK	John Feusner	CS4-00697CTCL	Wenas Creek	0.5 cfm	121.7	120.7 af/y irrigation plus 1 af/y stock water	7/2/2003
27	7	22-Jul	NR	Charles Douglas Mayo	CS4-ADJ03VOL1-4P61	Wenas Creek	1.19 cfm Apr 1 to Oct 31	237.6	Potential water right impairment and fish issues.	8/21/2003
28	7	22-Jul	NR	Charles Douglas Mayo	CS4-ADJ03VOL1-4P107	Wenas Creek	0.3 cfs Apr 1 to Oct 31	145.08	Potential water right impairment and fish issues.	8/21/2003
29	7	22-Jul	OK	U.S. Bureau of Reclamation	CS4-00284CTCL	Taneum Creek	10.67 cfs Apr 1 to Oct 31	1281	Recommend this transfer pending review by WDFW, a consensus minus one	8/21/2003
30	7	22-Jul	OK	Buena Irrigation District and Arthur Medley Jr	CS4-WRC120971	Yakima River - well and surface	1.616 Apr 1 to Oct 31	4085.82	4058.3 irrigation and 27.52 stock	7/21/2003

WTWG 2003 Proposed Transfers

Item	Item Batch	Due 3-Week	OK	Applicant	*Click on Number for Description* Applicant Number	Source	Instant (CFS)	Annual (AF)	Comments	*Click on Date for Notes* Meeting Notes
31	8	7-Aug	NR	Bull Canal Company Inc.	CS4-00886CTCL	Yakima River	1.03 Apr 1 to Oct 31	437	WDFW is working on the fish benefits issues, but in the absence of clear information, the WTWG was not ready to recommend this transfer	**8/21/2003**
32	8	7-Aug	NR	Ellensburg Cement Products	CS4-WRC120034	5 dug pits and Little Creek, a tributary of the Yakima	0.448 cfs or 201 gpm for dust control and production of sand and gravel. 0.809 cfs for irrigation of 28.9 acres.	89.8	WDOE had sent a thirty day notice to ECP on September 8	**8/21/2003**
33	8	7-Aug	?	Gerald and Judy Wagner	CG4-GWC987-A(Wagner)	Wells	50 gpm	20	Not considered within the 3 week limit	8/21/2003
33	8	7-Aug	OK	Hanna Keyes	CG4-GWC987-A@1(Keyes)	Wells	9 gpm	3.6		8/21/2003
33	8	7-Aug	OK	Thomas McCoy	CG4-GWC987-A@2(McCoy)	Wells	15 gpm	6		8/21/2003
34	8	7-Aug	NR	Wilbur and Mary Ann Mundy	CS4-01467CTCL@1	Teanaway River and a well	0.9 cfs for irrigation and 1.0 cfs for stock water.	297.5	"No recommendation" because of the new well	8/21/2003
35	8	7-Aug	NR	Selah-Moxee Irrigation District	CS4-01653CTCL	Yakima River	1.34 cfs	456	See 8/20/03 meeting notes	8/21/2003
36	8	7-Aug	NR	Robert Swedberg	CS4-01861CTCL	Naneum Creek			This is an after the fact change request as the applicant has asserted that the water was purchased and moved in 1918 without authorization as required by Chapter 90.03.380 RCW. The application will be DENIED by WDOE due to impairment of other existing rights	**8/21/2003**
37	8	7-Aug	OK	Cecile B. Woods	CS4-SWC1474	unnamed stream/spring	0.22 cubic feet per second (cfs) for irrigation and 0.04 cfs for domestic supply	80.8	76.8 acre-feet per year(afy) for irrigation and 4 afy for domestic supply	8/21/2003
38	9	2-Oct	NR	Driftwood Acres Maintenance Corporation	CG4-GWC4396-A	3 wells	15 gallons per minute from this right, 103 gallons per minute total	5.6	See 9/22/03 WTWG minutes	**9/22/2003**
39	9	2-Oct	NR	Driftwood Acres Maintenance Corporation	CG4-GWC6536-A@1	3 wells	38 gpm	60	See 9/22/03 WTWG minutes	**9/22/2003**
40	9	2-Oct	NR	Driftwood Acres Maintenance Corporation	CG3-22462C	3 wells	50 gpm	30	See 9/22/03 WTWG minutes	**9/22/2003**
41	9	2-Oct	NR	Norma M, Flach	CS4-00683CTCL	Cooke Creek or one of its branches	0.64 cfs	128	See 9/22/03 WTWG minutes	**9/22/2003**
42	9	2-Oct	NR	Norma M, Flach	CS4-00683CTCL@1	Cooke Creek and one of its branches	0.7 cfs	120	See 9/22/03 WTWG minutes	**9/22/2003**
43	9	2-Oct	NR	Norma M, Flach	CS4-00683CTCL@2	Cooke Creek or one of its branches	0.2 cfs	40	See 9/22/03 WTWG minutes	**9/22/2003**
44	9	2-Oct	OK	Teanaway Valley Family Farm & Dorothy Crosetto	CS4-00383CTCL	Teanaway River	1.4 cfs	455		9/22/2003
45	9	2-Oct	OK	Teanaway Valley Family Farm	CS4-00383CTCL@1	Teanaway River	0.8 cfs	237		9/22/2003
46	9	2-Oct	?	John Ashbaugh	CG4-GWC421-D	Well	643 gpm	331	Confirmed by DOE prior to WTWG meeting	10/27/2003
47	9	2-Oct	?	David D Murray	CG4-GWC422-D	Well	1011 gpm	444.5	Confirmed by DOE prior to WTWG meeting	10/27/2003
48	10	4-Nov	NR	City of Ellensburg	CG4-GWC926-D	7 wells	4861 gpm	3850	Outside the box - TWSA - See 9/22/03 WTWG minutes	**10/27/2003**
49	10	4-Nov	NR	City of Ellensburg	CG4-25307	2 wells	1700 gpm	2750	Outside the box - TWSA - See 9/22/03 WTWG minutes	**10/27/2003**
50	10	4-Nov	Info	Trendwest Investments	CS4-YRB07CC01724@4	Yakima and Cle Elum Rivers	3.34 cfs April 1 – October 15 and 2.97 cfs October 16 – March 31	355.98 afy April 1 – October 15 and 650.0 afy October 16 – March 31		10/27/2003
51	10	4-Nov	Info	Trendwest Investments	CS4-YRB07CC01724@5	Yakima and Cle Elum Rivers	2.23 cfs	536.38		10/27/2003
52	10	4-Nov	Info	Trendwest Investments	CS4-YRB07CC01724@6	Yakima and Cle Elum Rivers	3.93 cfs April 1 – October 15 and 1.12 cfs October 16 – March 31	892.17 afy April 1 – October 15 and 37.45 afy October 16 – March 31		10/27/2003
53	11	11-Nov	NR	Lloyd Garretson Company	CS4-02080CTCL	Cowiche Creek, Tributary to Naches River	0.1 cfs	23.65	Conservancy Board - See 9/22/03 WTWG minutes	**10/27/2003**
54	11	11-Nov	NR	Central Premix Concrete Co.	CS4-00039CTCL	Yakima River unnamed pond and shallow well	1.3 cfs		Conservancy Board - See 9/22/03 WTWG minutes+J83	**10/27/2003**
55	11	11-Nov	NR	Central Premix Concrete Co.	CS4-01591CTCL	Yakima River, unnamed pond, Blue Slough and shallow well	0.745 cfs	1	Conservancy Board - See 9/22/03 WTWG minutes	**10/27/2003**

WTWG 2003 Proposed Transfers

Item	Item Batch	Due 3-Week	OK	Applicant	*Click on Number for Description* Applicant Number	Source	Instant (CFS)	Annual (AF)	Comments	*Click on Date for Notes* Meeting Notes
56	12	12-Nov	Info	Rod Vetsch	CS4-ADJ03VOL1-3P59	Two wells in hydraulic connectivity with the Naches River	100 gpm	30		10/27/2003
57	12	12-Nov	OK	Naches Wonderland Campers Association	CS4 CTCL1224	Tieton River	0.06 cfs	6		10/27/2003
58	12	12-Nov	NR	Sky Meadows Ranch Country Club	CG4-27298C	2 new wells	56 gpm	119.2	Municipal Supply - See 9/22/03 WTWG minutes	**10/27/2003**
59	13	31-Dec	?	Curtis and Ruth Conner	CS4-01209CTCL	Naneum Creek	0.372 cfs May and June and 0.186 cfs in April and July 1 through October 15	92.5	92.5 afy for irrigation of 18.5 acres and stock water	no meeting
60	13	31-Dec	?	Morrison Ranches	CS4-01267CTCL	Naneum Creek	0.4 cfs May and June and 0.2 cfs in April and July 1 through October 15 and 0.2 cfs October 16 through December 31.	100	100 afy irrigation of 20 acres and 0.25 afy stock watering from October 16 to December 31	no meeting
61	13	31-Dec	?	Morrison Ranches	CS4-01267CTCL@1	Naneum Creek	0.30 cfs) April 1 through October 15 and 0.30 cfs October 16 through December 31	75	75 acre-feet per year (acre-ft/yr) for irrigation of 15 acres, and 5 acre-feet for stock watering April 1 through October 15, and 0.25 acre-feet for stock watering from October 16 through December 31	no meeting
62	13	31-Dec	?	Steven C. Rosbach	CS4-00467CTCL@1	Caribou Creek	1.042 cfs	165.38		no meeting
63	13	31-Dec	?	WDFW (John Kerwin)	CS4-SWC3676	Two infiltration trenches	1.99 cfs for fish propagation and 0.01 cfs for domestic supply	2	2 afy for domestic supply	no meeting
64	13	31-Dec	?	WDFW (John Kerwin)	CS4-SWC10284	Two infiltration trenches	1.0 cfs			no meeting
64	13	31-Dec	?	WDFW (John Kerwin)	CS4-SWC10285	Two infiltration trenches	1.2 cfs			no meeting
65	13	31-Dec	?	WDFW (John Kerwin)	CS4-SWC10286	Two infiltration trenches	1.2 cfs			no meeting

OK	WTG reviewed and found that application met criteria
Info	WTG requested additional information
NR	No recommendation - reviewed and found that application did not meet criteria - see comments
?	WTWG did not meet 3 week limit
X	Withdrawn

WTWG 2004 Proposed Transfers

Item	Batch	Due 3-Week	OK	Applicant	*Click on Number for Description* Applicant Number	Description	Source	Instant (CFS)	Annual (AF)	Comments	*Click* Analysis	*Click* Meeting Notes
	2004											
66	14	23-Feb	Info	WDFW	CS4-CTCL2109	Move POD from Tieton River to Oak Creek	Tieton River/Oak Creek	0.082 cfs	8.6 afy	There appeared to be no water right impacts or instream flow targets for Oak Creek, but there were serious concerns about environmental impacts that WDFW would need to address.	A	2/17/2004
67	14	23-Feb	Info	WDFW	CS4-CTCL2109-1	Move POD from Tieton River to Oak Creek	Tieton River/Oak Creek	0.043 cfs	5.12 afy			2/17/2004
68	14	23-Feb	**Moot**	Richard Matson	CS4-01396CTCL		Nile Creek	3.37 cfs	510 afy	See WTWG meeting notes	A	2/17/2004
69	14	23-Feb	**OK**	Paul Morton	CS4-ADJ20VOL3P300	Move POD	Ahtanum Creek	0.085 cfs	14.64 afy	14.64 acre-feet per year for irrigation of 8.5 acres of pasture		2/17/2004
70	14	23-Feb	**NR**	Ray Rader	CG4-26986C	Change of use from irrigation to domestic	Yakima Tieton ID	108 gpm	17.9 afy	The recommendation for this application is for it to be denied as the water use would be increased due to the supplemental nature of the right.	A	2/17/2004
71	14	23-Feb	X	Snokist Growers	CG4-GWC623	Combine 3 POWs and change place of withdrawal	well	60 gpm	96 afy	Withdrawn - Served by City of Tieton		2/17/2004
72	14	23-Feb	X	Snokist Growers	CG4-GWC1076		well	0	0	Withdrawn - Served by City of Tieton		2/17/2004
73	14	23-Feb	X	Snokist Growers	CG4-GWC1298		well	0	0	Withdrawn - Served by City of Tieton		2/17/2004
74	15	27-Feb	**OK**	MountainStar	Court	Temporary irrigation intake from Cle Elum River	Cle Elum River	2.23 cfs irrigation and recreation	0			2/17/2004
75	16	3-May	**OK**	Eaton	CS4-0909CTCL(B)	Change POD from ditch to pump and pipe	Wilson Creek	0.5 cfs	73 afy	Permanent change in purpose from Irrigation to Instream Flow in Wilson Creek. Conveyance loss included.		4/19/2005
76	16	3-May	**OK**	Eaton	CS4-0909CTCL(A)	Irrigation to instream (conservation)	Wilson Creek	0.38 cfs				4/19/2005
77	16	3-May	**OK**	Eaton	CS4-0909CTCL(A)	Change POD from ditch to sprinkler/pump - gated pipe flow irrigation	Wilson Creek	4.36 cfs	950 afy			4/19/2005
78	16	3-May	**OK**	Eaton	CS4-0909CTCL(A)	Irrigation to instream (conservation)	Wilson Creek	2.56 cfs				4/19/2005
79	17	14-May	**NR**	Seiber	CG4-27394C	Change the place of use and increase the acreage under irrigation	Well	55 gpm	33 afy	KCWCB - May 4, 2004 WTWG Notes	A	5/4/2004
80	17	14-May	**NR**	Palmeiro	CS4-00929CTCL	Change in POD	Cooke Creek	0.16 cfs	40 afy	KCWCB - remanded to KCWCB for impairment analysis	A	5/4/2004
81	17	14-May	**NR**	Anderson	CS4-00666CTCL	Eliminate surface diversion and replace with pumps - change in place, POD and increase in acres under irrigation	Naneum Creek	0.06 cfs	15 afy	KCWCB - No analysis - see 5/4/04 notes	A	5/4/2004
82	17	14-May	**OK**	Ludwick	CS4-00904CTCL	Move POD - gravity to pump	Wilson Creek	1.8 cfs	196 afy	KCWCB		5/4/2004
83	17	14-May	**OK**	Tyler	CS4-00784CTCL	Move POD - gravity to pump	Wilson Creek	0.4 cfs	40 afy	KCWCB		5/4/2004
84	17	14-May	**OK**	Angela Acres	CG4-2656P	Transfer groundwater right to two new groundwater wells	Wells (2)	400 gpm	174.6 afy	KCWCB - transfer POW and place of use for groundwater - 160 afy irrigation and 14.6 afy for supplemental irrigation		5/4/2004
85	na	7-Jun	**OK**	Triple LLC (Lamb) - Mill Ditch to Easton	Court Claim 908	Change POD and transfer Lamb water to KRD	Yakima River	3.68 cfs	968.25 afy	Diversion to KRD Easton	A	e-mail
~~86~~												

WTWG 2004 Proposed Transfers

Item	Batch	Due 3-Week	OK	Applicant	*Click on Number for Description* Applicant Number	Description	Source	Instant (CFS)	Annual (AF)	Comments	*Click* Analysis	*Click* Meeting Notes
87	18	7-Jul	Info	SMID - Camp Primetime	Claim 1653, 1651, 1888	Moxee Sub-A Warren Act Contract to "Church Camps"	Cold Creek	0.1 cfs	1.8 afy	Supply side needs to be based on storage or a water right upstream of the new PODs, or protective language should be included to curtail this right if it impacts storage or flow targets. Show all work on consumptive use calculations. Measurement and reporting of supply and demand required. Map and use information for demand side users to evaluate fish and water right impacts in the tributaries. Plan to notify	A	6/22/2004
88	18	7-Jul	Info	SMID - Camp Dudley	Claim 1653, 1651, 1888		Tributary to Clear Lake	0.11 cfs	4 afy			6/22/2004
89	18	7-Jul	Info	SMID - Camp Ghormley	Claim 1653, 1651, 1888		Jumpoff Creek	0.25 cfs	6 afy			6/22/2004
90	18	7-Jul	Info	SMID - Camp Fife	Claim 1653, 1651, 1888		Strawberry Creek	0.2 cfs	2 afy			6/22/2004
91	18	7-Jul	Info	SMID - Indian Creek Corral	Claim 1653, 1651, 1888		Naches	0.04 cfs	1.4 afy			6/22/2004
92	18	7-Jul	OK	Julnes	CS4-0828CTCL	Add point of diversion on Russell Creek (domestic use)	Russell Creek	.009 cfs	0.2 afy			6/22/2004
93	19	27-Jul	Info	Mayo Trust	DOE - Trust	Transfer from irrigation to instream trust water	Wenas Creek			Supply side needs to be based on storage or a water right upstream of the new PODs, or protective language should be included to curtail this right if it impacts storage or flow targets. Supply side calculation is based on the wrong time frame. Need more information on effects on fish above Bumping, and on the Wapatox water right	A	7/20/2004
94	20	4-Aug	OK	City of Cle Elum	OPL - Court Proposal							7/20/2004
95	20	4-Aug	Info	Hutchinson - Ellensburg Concrete Products	CS4-00169CTCL	ECP water right at Ellensburg Pit to new Cle Elum facility	Yakima River	0.025 cfs		KCWCB - For the consumptive use transfer, more information: Show all work for consumptive use calculation. Describe fallowing to offset CU. Measurement and reporting of supply and demand. Supply side needs to be based on storage or a water right upstream of the new POD, or protective language should be included to curtail this right if it impacts storage or flow targets.	A	7/20/2004
96	20	4-Aug	OK	Hutchinson - Ellensburg Concrete Products	CS4-00176CTCL		Yakima River	0.7 cfs		KCWCB - non-consumptive use		7/20/2004
97	20	4-Aug	OK	Hutchinson - Ellensburg Concrete Products	CS4-00176CTCL-1		Yakima River	0.7 cfs		KCWCB - non-consumptive use		7/20/2004
98	21	5-Aug	Info	Talerico	Court Claim	Pasture irrigation to domestic use above Lake Cle Elum		0.26 cfs	up to 5 afy	Show all work on consumptive use calculation for supply and demand sides. Supply side needs to be based on storage or a water right upstream of the new POD, or protective language should be included to curtail this right if it impacts storage or flow targets. Actual verifiable fallowing of supply side. Measurement and reporting of supply and demand required. Address demand side use in October.	A	7/20/2004
99	21	5-Aug	Info	Newton to Jefferson	Court Claim 1397	Pasture irrigation from Nile Ditch moved upstream to pasture irrigation on Fontaine Ditch. Temporary transfer to mitigate for out of priority use.	Nile Ditch	0.04 cfs	120 afy	Show all work for consumptive use calculation. Evaluate impacts to other water rights on Fontaine and Anderson ditch. Consumptive use evaluation. Information to evaluate fish and water right effects of 0.2 cfs deficit between old and new POD. Measurement and reporting of supply and demand required.	A	7/20/2004

WTWG 2004 Proposed Transfers

Item	Batch	Due 3-Week	OK	Applicant	*Click on Number for Description* Applicant Number	Description	Source	Instant (CFS)	Annual (AF)	Comments	*Click* Analysis	*Click* Meeting Notes
100	22	12-Aug	na	Union Gap - Water Conservancy Board	CG4-GWC5625-A	Groundwater, transfer of use, place of use and POW	Groundwater	570 gpm	684 afy	YCWCB - groundwater, transfer of use, place of use and POW	A	9/14/2004
101	22	12-Aug	na	Union Gap - Water Conservancy Board	CG4-GWC5621-A		Groundwater	350 gpm	466 afy			9/14/2004
102	22	12-Aug	na	Union Gap - Water Conservancy Board	CG4-GWC5623-A		Groundwater	150 gpm	240 afy			9/14/2004
103	22	12-Aug	na	Union Gap - Water Conservancy Board	CG4-GWC5767-A		Groundwater	200 gpm	320 afy			9/14/2004
104	23	14-Sep	NR	Dolsen	CG4-GWC7078	Change place, purpose and period of use and add POW	Well	650 gpm	280 afy	YCWCB - change place, purpose and period of use and add POW	A	9/14/2004
105	23	14-Sep	moot	Oord	CS4-00135CTCL	Change purpose, place and POD	Wells (2)	0.67 cfs	240 afy	YCWCB - change purpose, place and POD	A	9/14/2004
106	23	14-Sep	NR	Snowden	CS4-00366CTCL	Change POD from gravity to pump	Wilson Creek	0.8 cfs	114 afy	YCWCB - change POD from gravity to pump	A	9/14/2004

OK	WTG reviewed and found that application met criteria
Info	WTG requested additional information
NR	No recommendation - reviewed and found that application did not meet criteria - see comments
?	WTG did not meet 3 week limit
X	Withdrawn
moot	Action already taken
na	No Action

Attachment 3 – Updated Water Transfer Program Brochure

Yakima River Basin Water Enhancement Project Conservation Advisory Group

The group, known as the CAG, was appointed by the Secretary of the Interior to advise the Bureau of Reclamation and the state of Washington on how to implement 1994 federal legislation designed to address water problems in the Yakima basin. The legislation's goal is to stabilize irrigation water supplies during dry years, and to increase water and other critical habitat for salmon and steelhead in the Yakima basin.

Members of the consensus-based CAG include:

- Jim Trull, Sunnyside Valley Irrigation District
- Ron VanGundy, Roza Irrigation District
- Environmental Representative – vacant
- Brent Renfrow, Washington Department of Fish and Wildlife
- Virgil Lewis, Sr., Yakama Nation
- Bob Stevens, Washington State University.

Keechelus Lake in 2001

"The Water Transfer Program is a valuable tool that has been finely honed from past experience. Due to the nature of the Yakima watershed, inconsistent weather patterns and incomplete infrastructure, it is necessary to be able to respond to water shortages on very short notice. The WTWG provides the fastest possible response to meet individual purveyor needs while protecting the rights of all water users."

Jack Carpenter, Kittitas Reclamation District

"The "fast track" process devised at the beginning of the 2001 drought was a resounding success. Owing to the clarity of the criteria, if the proposal wasn't perfect, the WTWG was able to diagnose the problem so that the proposal could be quickly refined."

Bob Barwin, Yakima Regional Field Office, WA Department of Ecology

"Most people who wanted to lease or transfer water were aware of the criteria, and the vast majority of proposed transfers met them. This was critical to the success of the program in 2001."

Jim Esget, manager of the Bureau of Reclamation's Yakima River Basin Water Enhancement Program

"The long term relationships and good will among members of the CAG, developed through years of negotiation on other recommendations, was essential to success. Because of our past work, and the trust and understanding built as a result, we were able quickly to agree on criteria for transfers at the beginning of the irrigation season."

Katherine Ransel, former environmental representative on the CAG

Additional Information can be obtained from
Manager, Yakima Field Office
US Bureau of Reclamation
1910 Marsh Road
Yakima WA 98901-2058

Facilitating water transfers in the Yakima River Basin

Yakima River Basin Water Transfer Program

The program was created to assist municipalities, developers, irrigators, conservation groups and others to develop water transfers that make effective use of the basin's resources.

This program is sponsored by the Yakima River Basin Water Enhancement Project Conservation Advisory Group (CAG), Yakima Field Office of the US Bureau of Reclamation, and the WA Department of Ecology.

The Water Transfer Program

Agriculture in the Yakima River Basin

A key step in the success of a water transfer is early consultation with regulatory agencies and other affected parties. Early consultation can resolve issues before they become controversial, expediting approval of the transfer.

The transfer program, initially created to respond to the 2001 drought, expedites transfer requests by incorporating:

- Criteria that provide clear guidance in the development of "fast track" requests
- Early technical and operational review by a multi-disciplinary and multi-agency team
- A means for mutual cooperation among all involved parties

Because of the success of the program in 2001 – which resulted in the transfer of over 60,000 acre-feet of water – its sponsors have expanded the program to cover non-drought years and permanent transfers. The program is designed to assist municipalities, developers, irrigation districts, conservation groups and others to develop transfer applications that meet basic criteria for federal, state, local government and court approvals.

The program is voluntary and non-binding and intended for use in conjunction with transfer proposals submitted through the Washington Department of Ecology (WDOE), a Water Conservancy Board, or directly to the Yakima County Superior Court. It is consistent with the specific requirements of the Superior Court related to changes of use and transfers of surface water rights subject to adjudication.

Criteria

Criteria established by CAG were accepted by all involved parties for "fast track" response to drought year transfer requests. If the criteria could not be met, the alternative was to use the established but slower drought year process. The criteria were defined as follows:

1. TWSA (Total Water Supply Available) neutrality is maintained
2. Equivalent reductions are made in consumptive use
3. Water would have been used if not for the transfer
4. Transfer adheres to specific delivery schedule
5. There is no adverse change in instream flow
6. Transfer satisfies Yakima project operational considerations

Water Transfer Working Group (WTWG)

A working group was formed to apply these criteria and provide consultation to applicants on water transfer requests submitted for review. The parties proposing the transfer, a Water Conservancy Board, the Washington Department of Ecology or the US Bureau of Reclamation, can request a WTWG review. Recommendations of the working group are developed through consensus and are non-binding on applicants.

Naches River

The Working Group consists of the resource management agencies including:

- WA Department of Ecology (WDOE)
- US Bureau of Reclamation (USBR)
- Yakama Nation
- WA Department of Fish and Wildlife
- US Fish and Wildlife Service
- NOAA Fisheries

Other stakeholders are included in water transfer discussions - irrigation districts, municipalities and parties with a significant interest in a specific application.

If consensus cannot be reached, the application is referred back to the applicants for refinement. The applicant can act on the recommendations or continue the prescribed transfer processes without working group concurrence.

The objective of this program is to provide an early review with clearly defined criteria so that obstacles to formal legal approval through the prescribed legal process are minimized.

Brochure Updated April 2005

Facilitating water transfers in the Yakima River Basin

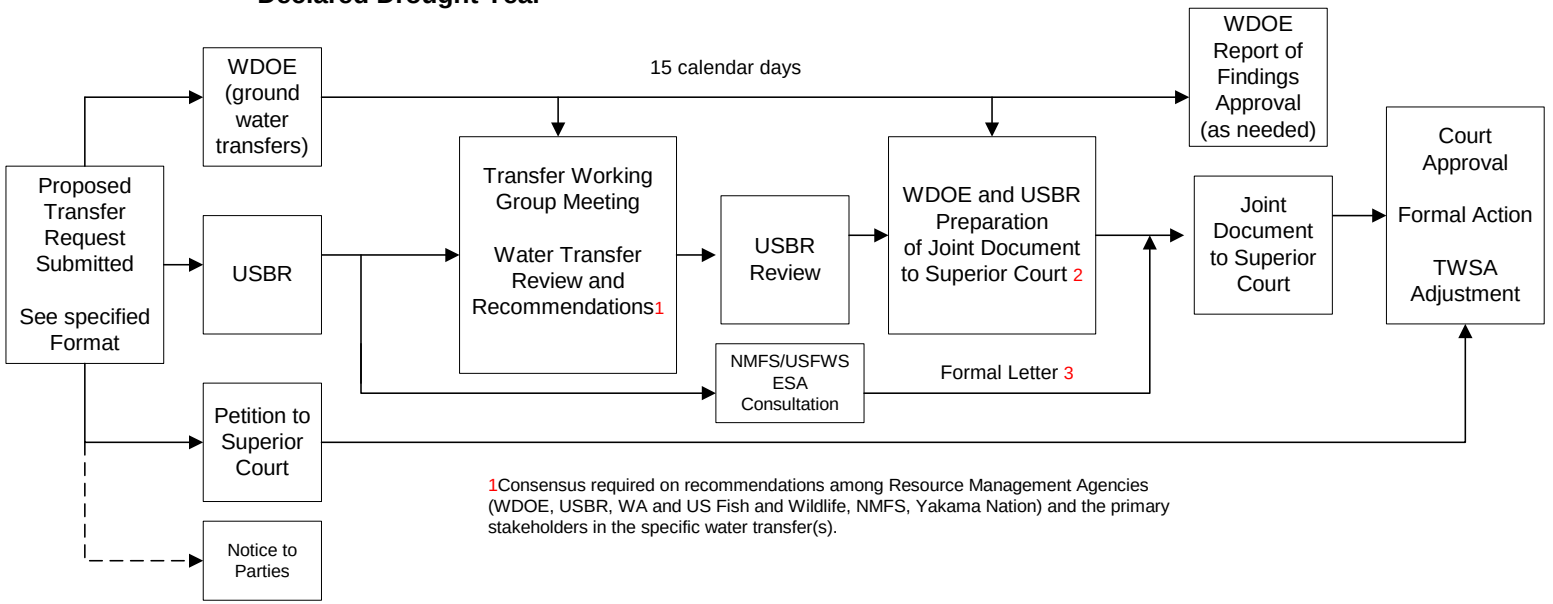
Additional Information can be obtained from
Manager, Yakima Field Office
US Bureau of Reclamation
1910 Marsh Road
Yakima WA 98901-2058
(509) 575-5848

or on the Internet at
www.roundtableassociates.com/cag

Addendum Flow Chart – Reflecting changes of Pre-trial Order No. 12

Yakima Basin Temporary Water Transfer Process
Declared Drought Year

based on 2001 process and updated per Pre-Trial Order No. 12, dated 1/22/2002



1Consensus required on recommendations among Resource Management Agencies (WDOE, USBR, WA and US Fish and Wildlife, NMFS, Yakama Nation) and the primary stakeholders in the specific water transfer(s).

The Water Transfer Working group will meet in a timely manner at the USBR office in Yakima to consider transfer requests. In 2001 these meetings were held on Mondays at 1:30 PM.

The group has established a preferred format for submitting drought related water transfer requests for review. Adherence to this format will assist the group in processing requests in a timely manner.

Requests should be received not later than Tuesday of the week preceeding the Monday meeting to allow for pre-meeting review by Water Transfer Working group members. Request should be sent to the USBR Yakima Field Office Manager

2 Applicant may be requested prepare the proposed order to Superior Court and submit to WDOE/USBR for approval.

3 NMFS didn't see need to formally consult in the 2001 drought year transfers.The semi-monthly notice will be published by WDOE's Referee's office on the 1st and the 15th of every month, while the drought year transfer process is active.

USBR needs to submit entries to the Referee's office 5 days in advance of that date.

USBR deadlines are the 25th and the 10th of each month for submitting the semi-monthly notice entries to WDOE.

Court will consider proposals weekly as necessary or at the normal Water Day hearing on the 2nd Thursday of each month.