



Water Right Applications Processing

2003 Progress Report to the Legislature

December 2003

03-11-015

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Water Right Applications Processing

2003 Progress Report to the Legislature

Water Resources Program

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December 2003

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SUMMARY: 2003 WATER RIGHT APPLICATIONS PROCESSING

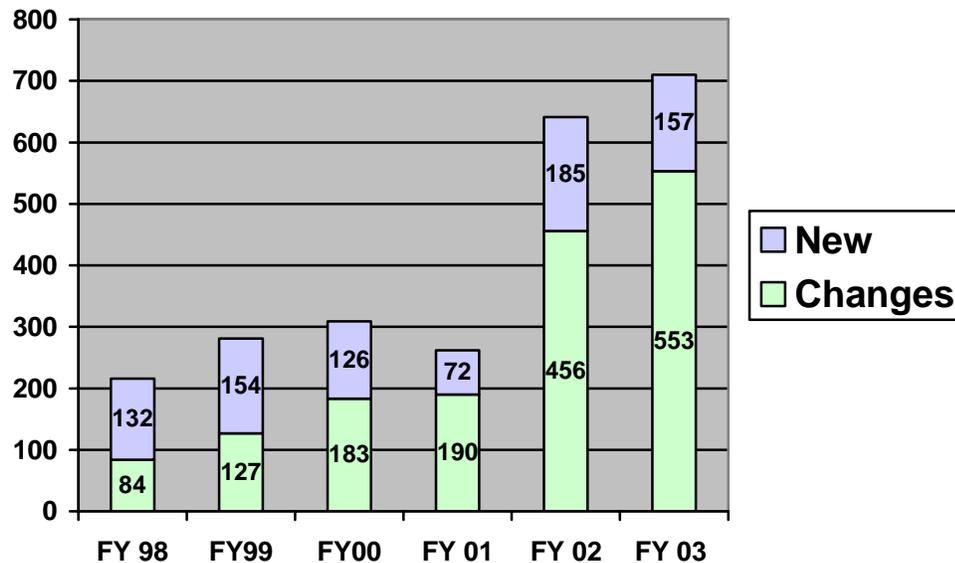
This report describes progress the Department of Ecology has made in processing applications for both changes to existing water rights and new water right applications during Fiscal Year (FY) 2003.

There has been a sharp increase in water right decisions following increases in funding, staffing, and policy flexibility provided by the 2001 legislature as part of the State Water Strategy. Ecology, along with local water conservancy boards and cost reimbursement contractors, has substantially increased the processing rate of water right applications.

Record Production

Overall change and new water right application processing jumped from 262 in FY 2001 to 641 in FY 2002 and 710 FY 2003. For the 2001-03 biennium production totaled 1,351 decisions. This is more than double the 1999-01 biennium production.

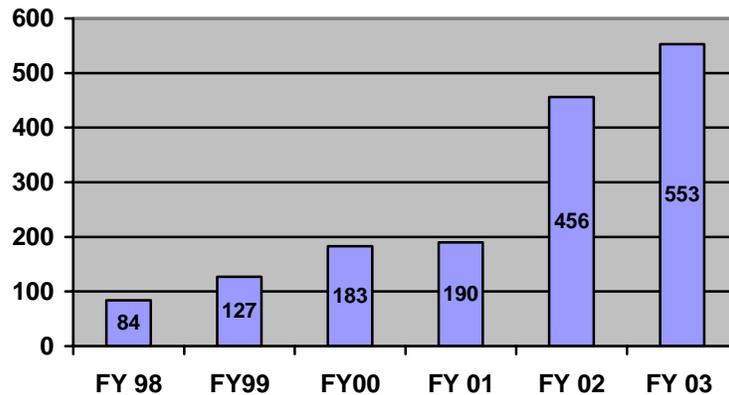
New & Change Apps. Processed - Permanent



Water Right Changes Lead the Way

Water right change application processing has been the Water Resources Program's top operational priority since receiving additional funding, staffing and policy flexibility in FY 2001. In FY 2003, 553 permanent water right change applications were processed. For the biennium, (2001-03) the Program processed 1,009 applications for changes to water rights. This is a record and surpasses the program goal of processing 1,000 applications.

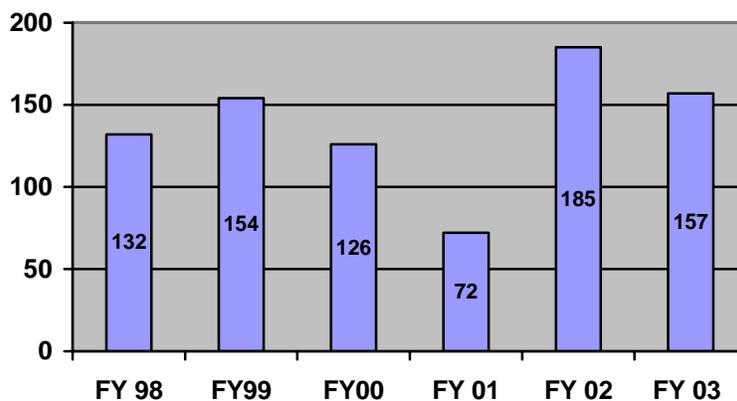
Changes Processed



Progress on new water right decisions

New water right decisions have also increased, even though the primary focus has been on processing water right changes. In FY 2003, 157 new water right applications were processed. For the biennium, (2001-03) and since receiving the additional funding, the Water Resources Program processed 342 applications for new water rights. This is more than double the program goal of processing 150 applications for new water rights.

New Water Rights Processed



Conservancy Boards and cost reimbursement contractors aid production

Local Water Conservancy Boards and private cost reimbursement contractors have contributed to the production of water right decisions. Of the 710 permanent water right applications processed in FY 2003, Conservancy Boards (changes only) and cost reimbursement contractors accounted for a combined 15 percent of the production (10 and 5 percents, respectively).

Service demand

The number of pending new water right applications accumulated over the years (5,227) is more than three times the number pending for water right change applications (1,439) at the end of FY 2003. However, the pattern of service demand is shifting. Demand for *additional* changes to existing water rights (474 in FY 2003) is more than double the demand for *additional* new water rights (207 added FY 2003). This may be a function of applicants going to the line that is shorter, moving faster and where the probability of a “yes” is higher. It may also indicate the increasing sophistication in meeting additional water needs through water right changes, water use efficiencies and water markets, rather than new sources.

Conclusion

The focus and record production on water right change application processing is slowly and steadily reducing the number of pending water right change applications despite the increased demand of additional incoming applications for water right changes. Because of the priority and focus on water right change processing, progress on processing on new applications for water rights is correspondingly lower.

The processing rate for FY 2004 is proceeding at a lower rate. Several factors are involved including a \$1.0 million/three permitting staff cut for the new biennium, movement to more difficult basins, some significant policy issues affecting water- right processing and new work in implementing the municipal water right legislation. Efforts are underway to adjust to these conditions and continue the record progress achieved over the 2001-03 biennium.

BACKGROUND - WATER RIGHT APPLICATIONS PROCESSING

Purpose

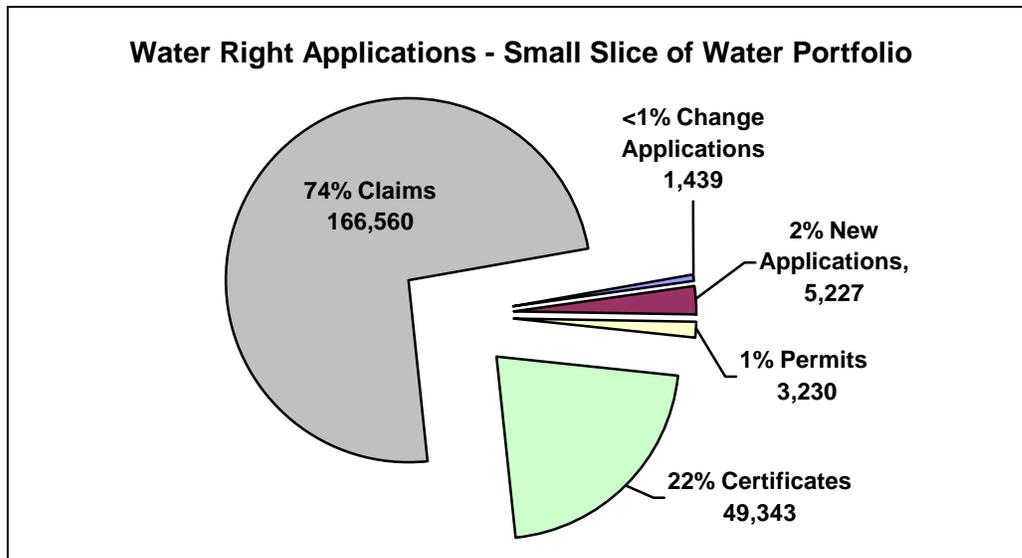
This report describes the progress the Department of Ecology has made in processing water right changes during the past year as requested in RCW 90.80.901. During its 2001 session, the legislature expanded Ecology's funding and staffing levels and provided greater flexibility to process applications to change existing water rights. Ecology now has a biennium of experience using the additional funding and new law designed to facilitate water right change processing. While the focus of this report is on changes to water rights, the report also describes progress on new water right applications.

Water right applications: A slice of the larger water picture

Anyone seeking new uses of surface and ground water must apply to Ecology for a new water right, unless the proposed use is covered by the exempt withdrawal provisions for use of less than 5,000 gallons of water daily. An existing water right holder who wishes to make a change to their existing right must apply to Ecology or a local water conservancy board. Water right change applications can include purpose, place of use or point of withdrawal, and/or diversion.

To grant a new water right or change, reviewers must determine: whether water is available for allocation; if it would impair senior rights; if it would be put to beneficial use; and whether the proposed use would be in the public interest (no public interest test for surface water change). For a water right change proposal, a tentative determination on the extent and validity of the current right must be completed, indicating how much has been put to beneficial use and therefore eligible for change.

Applications for water rights and changes are one segment of the larger portfolio of actual and potential legal water use portrayed below. Not represented below, are tribal treaty rights, federal reserved rights, and more than 750,000 exempt withdrawals.



This report focuses on processing water right applications – the front end of water management. This report does not address the various other activities that are part of larger picture of water management (adjudication of rights, compliance, metering and gauging, setting and achieving instream flows, watershed planning, policy and management, information systems). To make water allocation meaningful, other elements of water management systems need to be in place and operating effectively.

Historic Gap: Service demand and water right production capacity

For years, the service demand for water right processing far exceeded the agency’s application processing capability. This resulted in a backlog of more than 7,000 water right applications waiting to be processed. Applicants had to wait years to get decisions. As a part of a continuing multi-year joint executive and legislative effort to implement a State Water Strategy in 2001, the legislature sought to reduce the gap between service demand and water right application production by providing Ecology with new tools and funding.

Priority: Processing changes to water rights

As part of the State Water Strategy, the 2001 legislature provided Ecology with additional funding and staffing for water right processing. The enactment of ESHB 1832 was a breakthrough for improving Ecology’s ability to process water right change requests. The Act included a variety of water law changes ranging from watershed management to trust water rights. Section 5 of the act contained key provisions that facilitate the use and processing of changes to existing water rights:

- **“Two-line” processing option.** Under the new law, water right change applications can be processed independently of applications for new water rights within the same water supply source without first having to evaluate the effects on new water right applications. It allows, but does not require Ecology to process applications for water right changes ahead, and independent of applications for new water rights. This is a modification of the strict “first-in-time, first-in-right” doctrine of Western water law.
- **No Line Blocking.** Applications for changes to existing water rights can proceed ahead of previously-filed change applications when sufficient information is not available to make a decision on older applications. The practical effect is that older water right change applications with inadequate information do not delay newer, complete change applications.

With these actions and funding priorities the legislature placed primary emphasis on reducing the number of applications for changes to existing water rights. The focus on water right changes also reflected an increased awareness concerning the benefits of making better use of water already legally appropriated. In areas where water is fully allocated, water right changes are key to meeting local needs and yielding higher economic returns.

THREE SERVICE PROVIDER OPTIONS

There are three options available for applying for water rights, depending on the circumstances of the application. These are:

Conventional Ecology approach

Under this approach, applicants for new water rights and changes apply to one of the four regional Department of Ecology offices providing services in their area. Ecology staff completes all the work necessary to process applications from beginning through decision making. Historically, this is how all water right applications have been processed. Most decisions are still being made using the conventional approach. In response to the large number of pending water right applications and interest in other models of service delivery, two alternative service provider approaches have been added in recent years.

Local water conservancy boards

The legislature authorized local water conservancy boards to assist Ecology in processing the large inventory of water right change applications. Starting in 1998, conservancy boards were formed as local partners in processing water right changes in many areas of the state. There are currently 21 boards operating throughout the state – five are located in Western Washington and 16 in Eastern Washington.

Ecology has responsibility for processing water right changes in areas of the state without water conservancy boards. In areas with conservancy boards, applicants have the option of submitting their applications for water right changes to their local board or Ecology. Applications being considered by a board are also concurrently filed with Ecology but not processed by the department. Boards make records of decisions (RODs) on water right change applications. These decisions are reviewed by Ecology for compliance with state water law. Each conservancy board is an independent unit of local government established by resolution of the county or counties it serves and approved by the Ecology director.

A conservancy board can serve a single watershed, multiple watersheds, and a single county or even multiple counties. Ecology staff is assigned to support Board activities, including training. Ecology has final review authority to review board RODs. After reviewing them, Ecology issues administrative orders to affirm, modify or reverse board decisions.

Water Conservancy Boards (shaded areas)



Cost reimbursement contracting

Under this approach, applicants for water rights (both new and changes) have the option of speeding up their water right decisions by paying the costs of processing their applications. They must also pay the processing costs for all other water right applications proposing to draw from the same water source that are in line ahead of the applicant. This is required to satisfy state water law that mandates applications be processed in the order they are received. Applicants seeking expedited permit decision-making can use this optional, voluntary cost-reimbursement arrangement. Projects tend to be larger, time-sensitive and/or with higher economic returns and are proposed by applicants with a willingness to pay for priority processing.

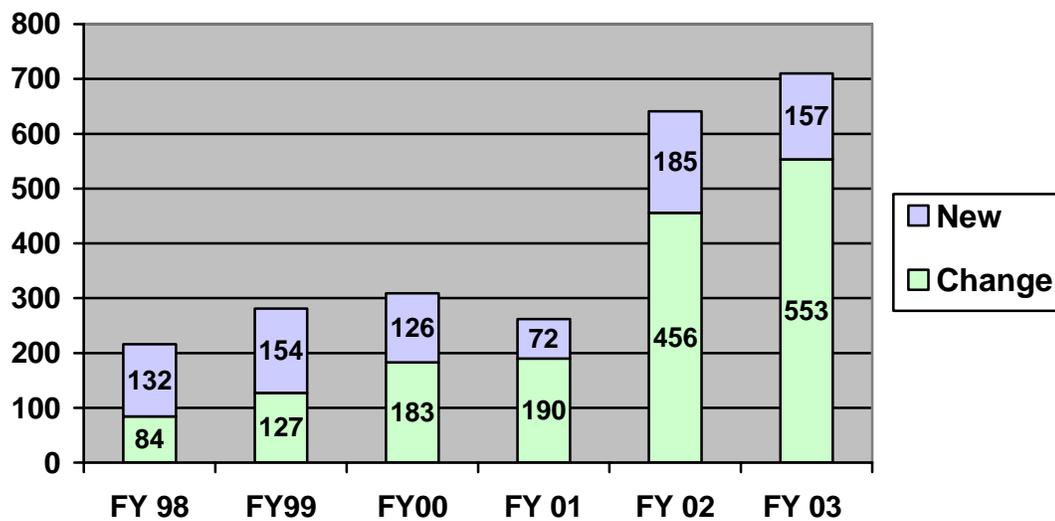
Under terms of an applicant initiated cost-reimbursement arrangement, an applicant enters into an agreement with Ecology to pay the department's cost of hiring, managing and overseeing an independent consultant to do the agency's routine and technical permit processing work (not approval or policy work). Final decisions are made by Ecology rather than the consultant.

PRODUCTION RESULTS

Overall production record - applications for new rights and changes

Overall processing for change requests and new water right applications jumped from 262 in FY 2001 to 641 in FY 2002 and 710 FY 2003. For the 2001-03 biennium production totaled 1,351 decisions – more than double the 571 applications that were processed during the 1999-01 biennium. Note that these figures exclude drought applications, temporary applications which weren't converted to permanent applications later in the process, and seasonal change applications.

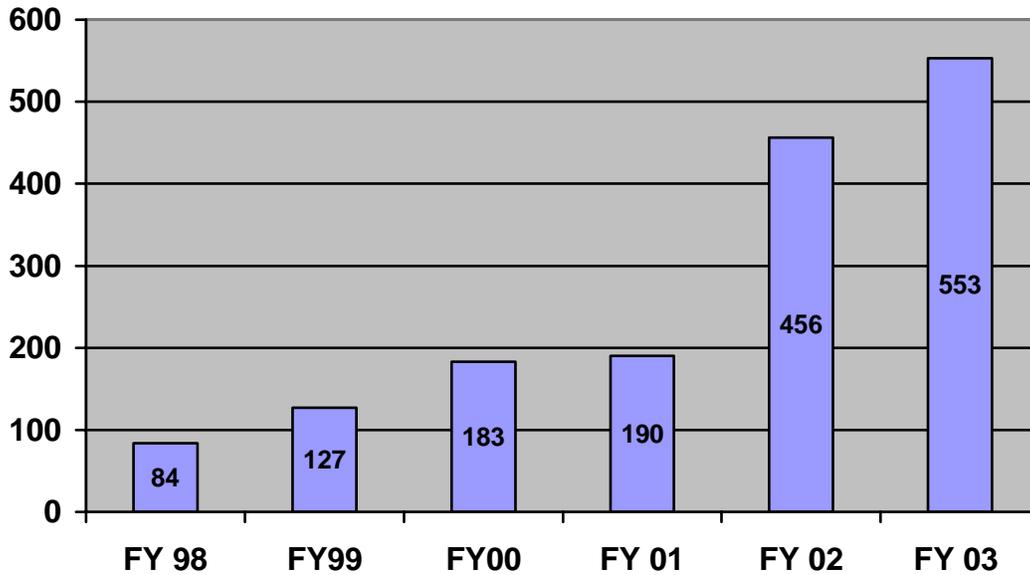
New & Change Apps. Processed - Permanent



Big jump in water right change decisions lead way

In FY 2003, 553 permanent water right change applications were processed. For the 2001-03 biennium and since receiving the additional funding and flexibility, the Program processed 1,009 applications for changes to water rights. This is a record and surpasses the program goal of processing 1,000 applications.

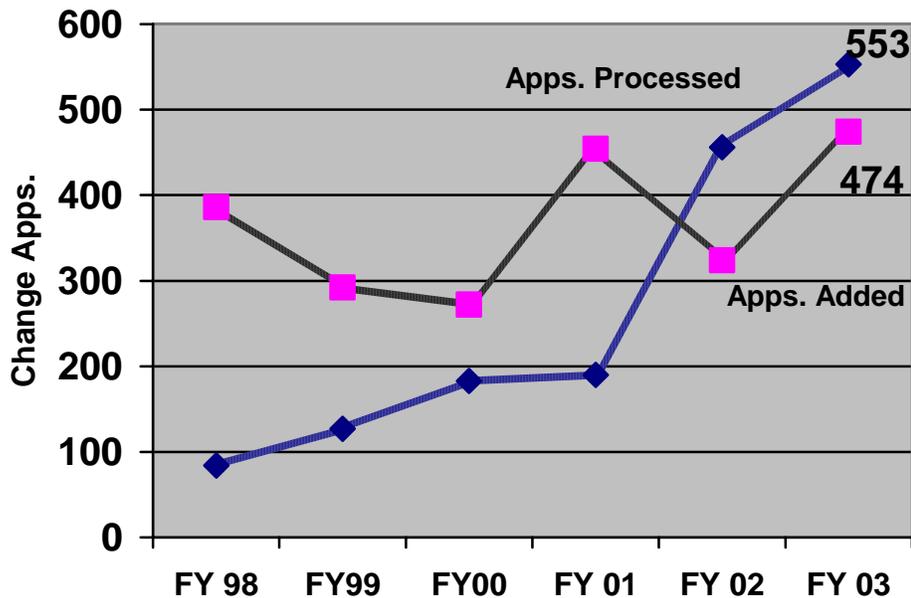
Changes Processed



- These figures are permanent changes only and exclude processing of temporary, drought, and seasonal applications. See additional information under *Temporary and drought change applications* section below.
- Highest production is being achieved in Ecology's central regional office in Yakima, followed by department's regional offices in Spokane (Eastern Regional Office), Bellevue (Northwest Regional Office) and Lacey (Southwest Regional Office). This pattern directly reflects the strategy to target the deployment of additional new staff in proportion to the inventory of pending change applications, by region.

Service gap for water right change applications: Pattern shifts

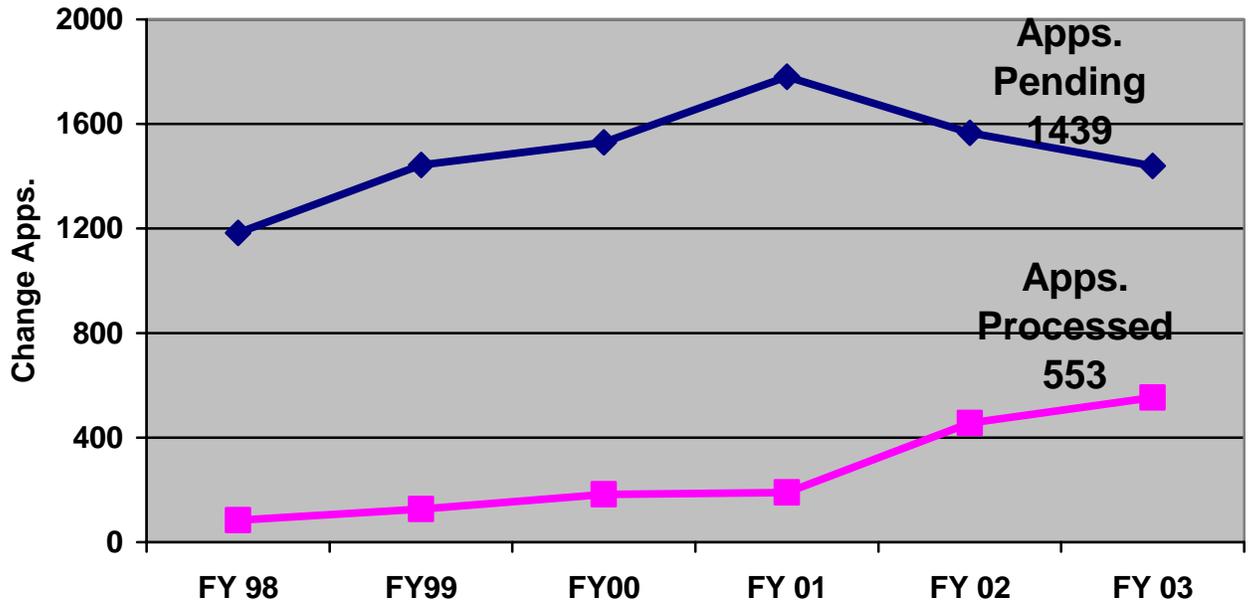
Slightly more water right change applications were processed than were added in FY 2003.



- *Additional* service demand (as measured by the additional submissions for water right change applications per fiscal year) dipped below water right processing capacity in FY 2002 (as measured by rate of processing), reversing the previous pattern.
- In FY 2003, production capacity (553 applications processed) exceeded additional service demand (474 additional change applications) by 79 applications.
- If this pattern continues, it will result in the steady reduction of change applications lingering in line for long periods of time waiting to be processed. The timing of this will be driven not only by the processing rate but also by the rate of additional applications submitted.

Number of pending change applications declines

Even with the number of additional submissions of water right change applications, current production rates are reducing the net number of water right change applications waiting to be processed.

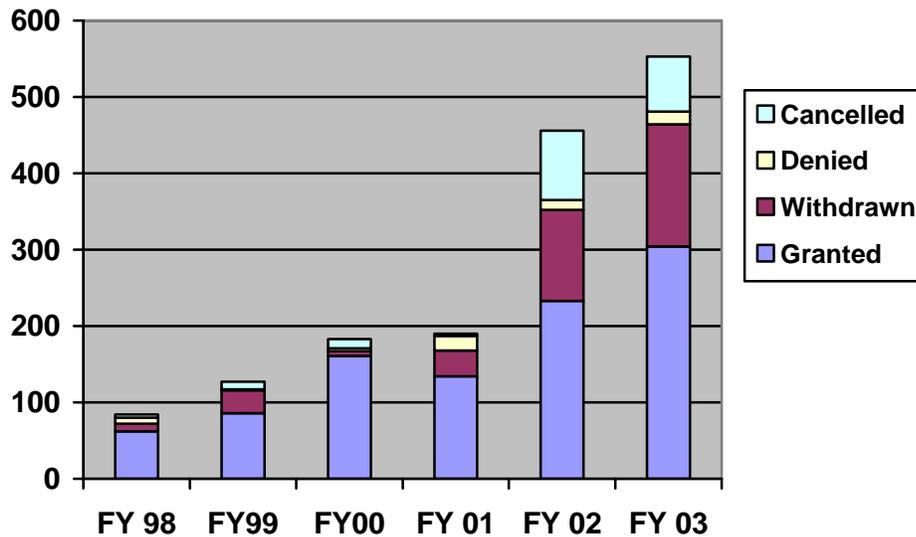


- There is a reversal of the long standing pattern of year-to-year increases in the number of water right change applications waiting for processing.
- At current FY 2003 processing rates, Ecology's Water Resources Program would achieve the goal of eliminating the equivalent of the original approximately 2,000 change applications pending July 2001 in 2005. However, given the rate of additional incoming applications and at FY 2003 processing rates, it would require additional time to get to a "zero" wait for application processing.

Approval rates for permanent change applications

Change application processing can result in applications being approved or denied. Applications also can be cancelled if requested information, fees, or some other basic threshold problem exists with the application. Also, applications can be withdrawn during processing if applicants change plans.

Permanent Change Apps. Processed



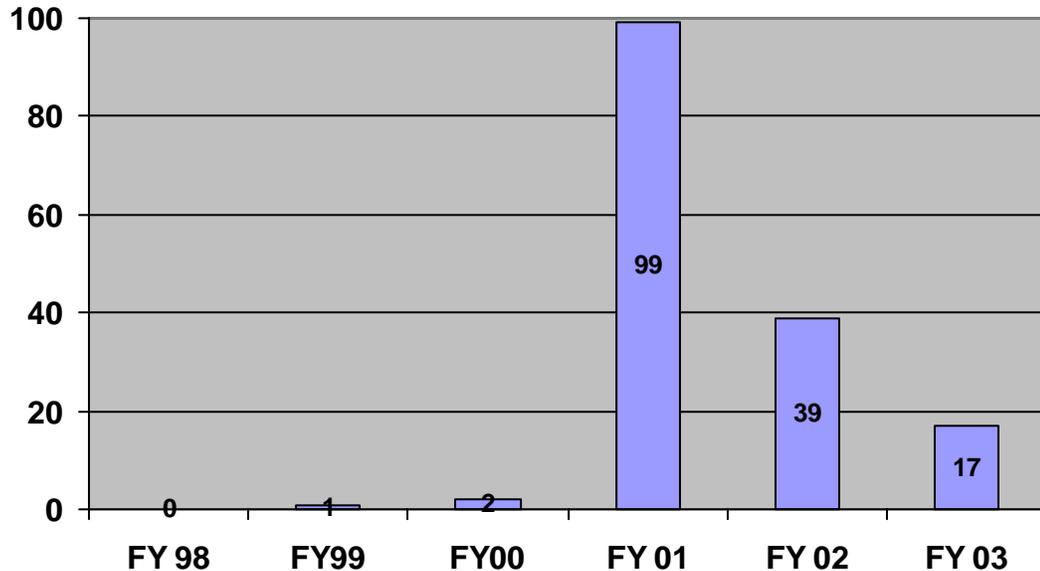
For FY 2003 (preliminary breakout):

- About 310 (56%) of the total 553 water right change applications processed were approved.
- Only about 3 percent (17) of the total water right change applications processed (553) were denied.
- About 42 percent of applications were canceled or withdrawn. This may be due, in part, to efficiency efforts by Ecology not to fully process some applications. This is done when it can be determined that there are substantial reasons to cancel applications prior to full processing or the applicant chooses to withdraw it.

Temporary and drought change applications also processed

In addition to processing permanent applications for water right changes, temporary and drought related applications were also processed.

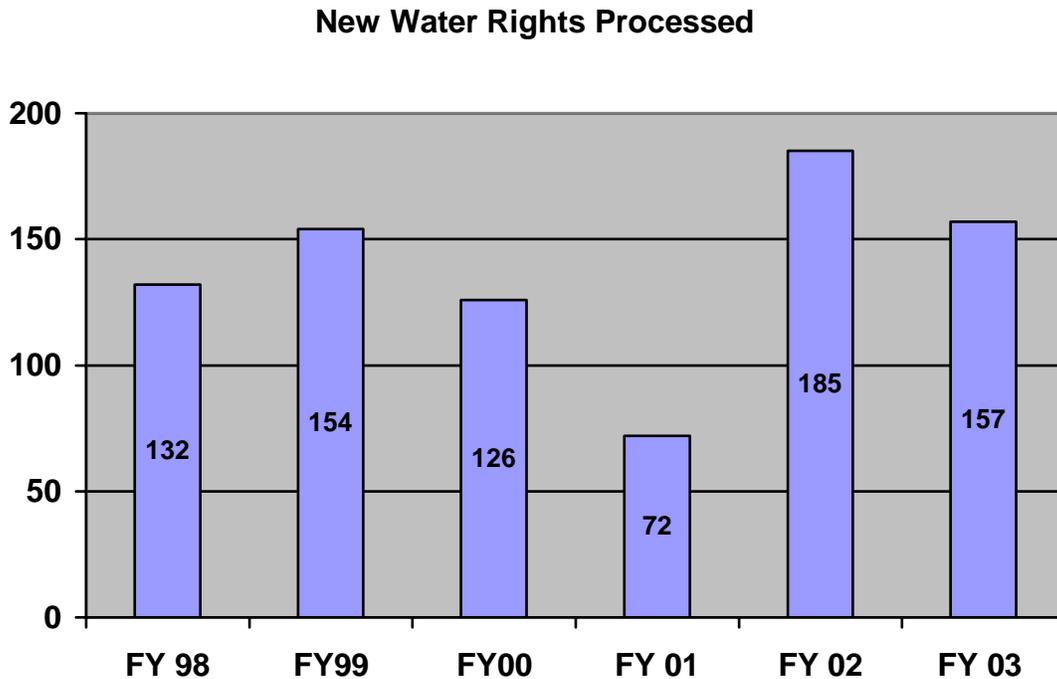
Temporary & Drought Apps. Processed



- In addition to permanent changes 17 temporary and short term and changes were recorded in FY 2003.
- In addition to temporary and short term changes, approximately 140 seasonal changes, mostly for irrigation crop rotation, were processed by the Eastern Regional Office in Spokane. They are not represented in these totals.
- The FY 2001-02 figures reflect a big jump due to drought-related water right applications using special drought funding and staff. Most of the 2001 drought and temporary changes were processed in the Central Regional Office in Yakima.

New water right decisions

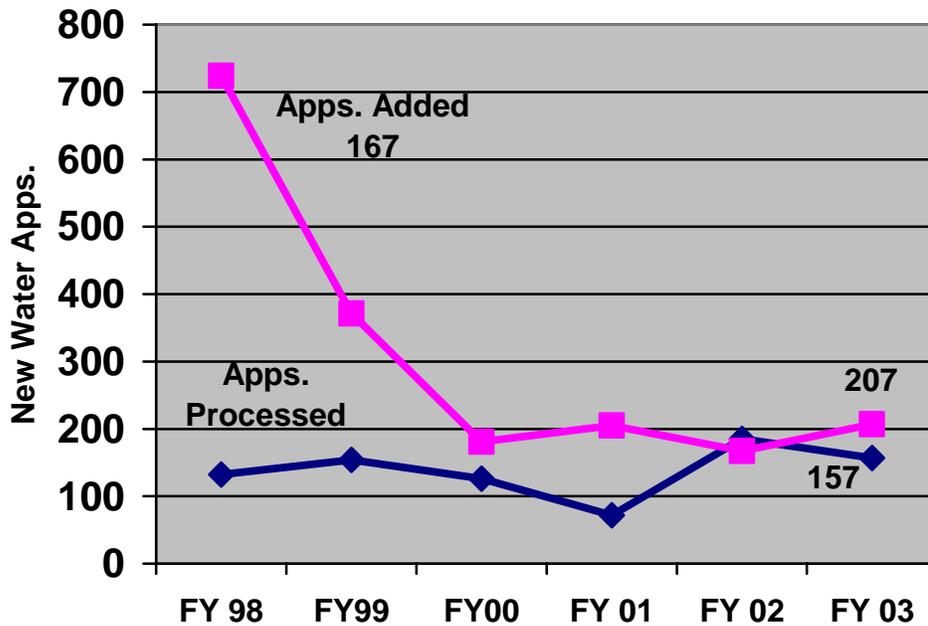
New water right decisions also have increased for 2001-03 biennium even though the primary focus has been on processing water right changes.



- In FY 2003, 157 new water right applications were processed.
- For the 2001-2003 biennium and since receiving the additional funding, Ecology processed 342 applications for new water rights. This is more than double the program goal of processing 150 applications for new water rights.
- These figures exclude temporary and drought applications.

Service gap: New water rights

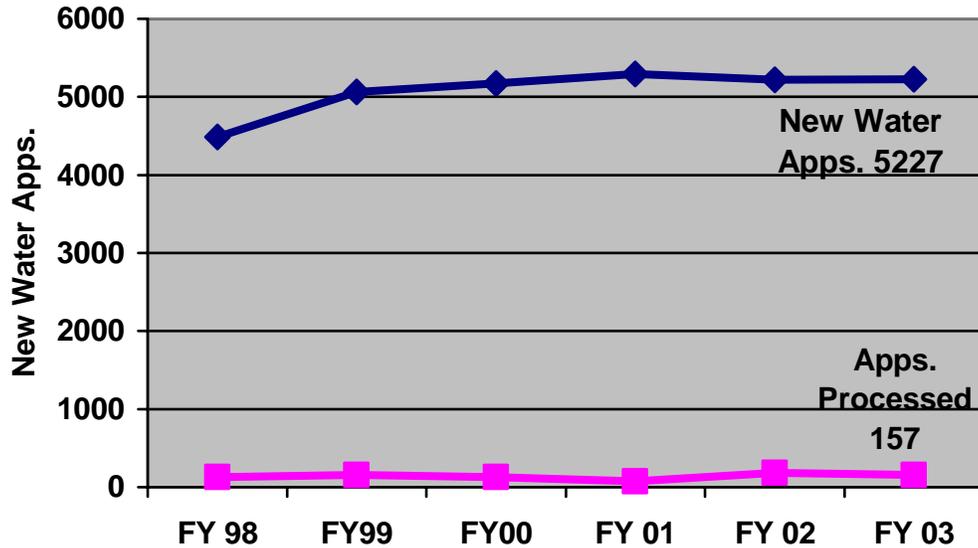
The recent higher processing rate coupled with a reduction in the number of new water right applications submitted over the past fiscal years, has resulted in narrowing the gap between new application processing service demand and service capacity.



- In FY 2002, *additional* service demand (as measured by the additional submissions for new water right applications per fiscal year) dipped below water right processing capacity (as measured by rate of processing) reversing the pattern of previous years.
- In FY 2003, this pattern reverted slightly as, production capacity (157 application processed) was below additional service demand (207 new applications added).
- After a sharp decline FY 1998-2000, demand for additional new water rights has remained fairly steady at this lower level over the past three fiscal years.

Slight increase in pending applications for new water rights

Even with the additional submissions of new water change applications, the number of pending applications has remained essentially steady from FY 2002 to FY 2003.



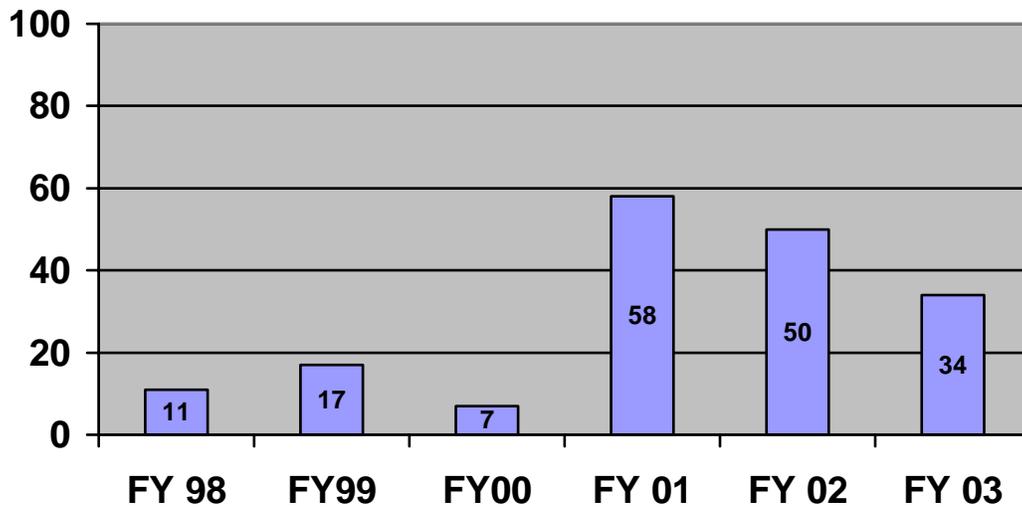
- The FY 2002 reduction in pending applications reversed the long standing pattern of increases to the number of new water right applications waiting to be processed.
- The shift proved temporary as there was a slight increase in pending new water right applications from FY 2002 (5,219) to FY 2003 (5,227).
- At current production and service demand rates, the number of pending applications for new water rights will continue to increase rather than decline.

Note: Figures do not include new drought and temporary applications.

New temporary and drought water right applications also processed

In addition to processing permanent applications for new water rights, new temporary and drought related applications were also processed.

**New Water Apps. Processed
Temporary, Drought & Short Term**

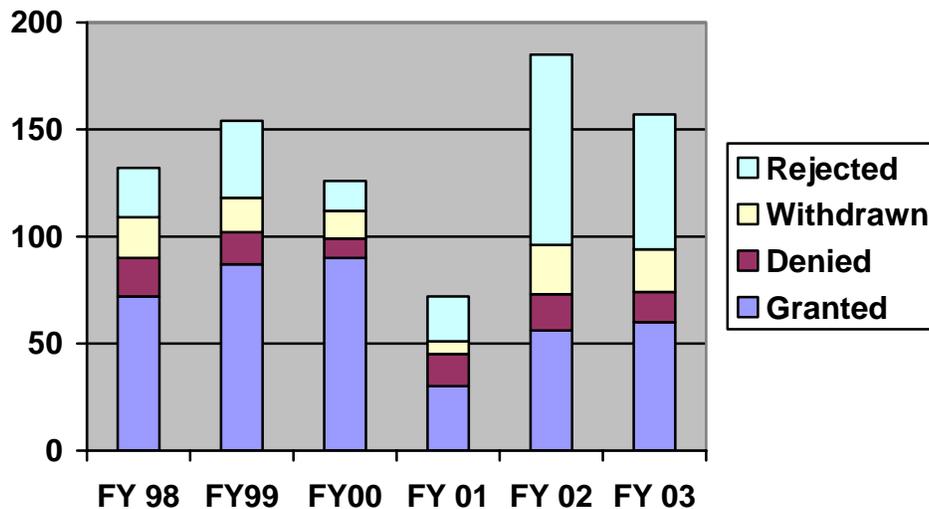


- The 2001 drought produced a big jump in new temporary and drought-related water right applications. Most of the drought and temporary changes were processed in the Central Regional Office in Yakima.

Approval rates for new water right applications

Applications for new water rights result in permits being granted or denied by Ecology. Applications also are rejected if required information, fees or some other basic threshold problem exists with the application. Applications also can be withdrawn by the applicant during processing.

New Permanent Water Apps. Processed



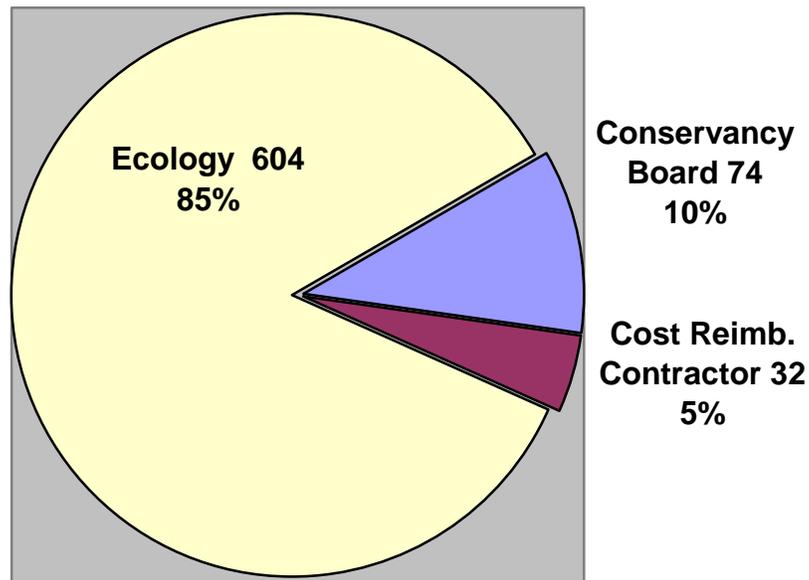
For FY 2003 (preliminary breakout):

- About 38 percent (60) of the new water right applications processed (157) were granted permits.
- Only about 9 percent (14) of the new water right applications processed (157) were denied.
- Both in FY 2002 and 2003, an increasing proportion of applications were rejected or withdrawn compared to earlier years. This may in part be due to efficiency efforts by Ecology to not fully process applications where the applicant may withdraw or where it can be determined that there are substantial reasons to reject applications prior to full processing.

Production by conservancy boards and cost reimbursement contractors

Water conservancy boards and private cost reimbursement contractors have added to the production of water right decisions.

FY 2003 Water Rights Production by Service Provider



- Conservancy boards (changes only) and cost reimbursement contractors contributed a combined 15 percent of the production the 710 water right applications processed, both new and changes in FY 2003
- When new water rights are excluded, the relative contribution of conservancy boards to water right change processing production rises to over 13 percent and accounts for 74 of the 553 changes processed in FY 2003.
- 32 water right applications, for both changes and new water rights, have been processed under the cost reimbursement arrangement in FY 2003. Fifteen of these have been the applications of cost reimbursement clients (“target applications”) and 17 have been applications that were ahead of them in line that have been swept along (“collateral applications”). Projects tend to be larger, time-sensitive and/or with higher economic returns and are proposed by applicants with a willingness to pay for priority processing. Production could have been somewhat higher but the administrative structure to support the new program initially lagged behind.

Shift in service demand: new water rights and changes

The number of pending new water right applications accumulated over the years (5,227 FY 2003) is more than three times the number pending for water right change applications (1,439 FY 2003). However, the current service demand pattern is shifting. Demand for *additional* changes to existing water rights (474 FY 2003) is more than double the demand for *additional* new water rights (207 added FY 2003). This may be a function of applicants going to the line that is shorter, moving faster and where the

probability of a "yes" is higher. It may also be an indication of the increasing sophistication in meeting additional water needs via water right changes, water use efficiencies and water markets, rather than new sources.

CONCLUSION

IN the two years since receiving increased, funding, staffing, and policy flexibility, there has been a sharp turnaround in processing water right applications. Ecology, along with conservancy boards and cost reimbursement contractors, has substantially increased the processing rate of water right change applications as well as applications for new water rights.

The focus and record production on water right change application processing is slowly and steadily reducing the number of pending water right change applications despite the increased demand of additional incoming applications for water right changes. Because of the priority and focus on water right change processing, progress on processing on new applications for water rights is correspondingly lower.

The processing rate for FY 2004 is proceeding at a lower rate. Several factors are involved including a \$1 million/three permitting staff cut for the new biennium, movement to more difficult basins, some with significant policy issues affecting water right processing and new work in implementing the municipal water right legislation. Efforts are underway to adjust to these conditions and continue the record progress achieved over the 2001-03 biennium.

For more information

For questions or more information about Ecology's progress on processing water right change applications, contact Ben Bonkowski at (360) 407-6990 (e-mail: bbon461@ecy.wa.gov). For information on water conservancy boards, contact Janet Carlson at (509) 329-3529, (e-mail: jaca461@ecy.wa.gov).