

Cost Reimbursement option for processing water right applications

In 2000, the state Legislature created Cost Reimbursement as an alternative for water right applicants to speed up the decision-making on their application. In 2010, changes were made to cost reimbursement in the state water code. This publication answers basic questions on how the cost reimbursement process currently works. (See also RCW 43.21A.690 and RCW 90.03.265.)

Q: What is cost reimbursement?

A: Cost reimbursement is a type of contract between a water right applicant and the Department of Ecology (Ecology). Under this contract, applicants assume the full cost of processing their water right application, with some or all of the work performed by Ecology's consultant. Presently, Ecology has eight consulting firms pre-approved to do this work.

The cost reimbursement option allows a private consultant to do the work that Ecology hydrogeologists and permit writers would ordinarily do. This helps free up Ecology staff to work with other applicants' on their water right applications.

The consultant conducts a site investigation, performs the environmental and hydrogeologic analyses, identifies whether the water is available or would impair other water users, prepares a report with his or her findings, and recommends whether to approve the application.

Ecology makes the final decision on the application.

Q: What is the advantage of using cost reimbursement?

A: Cost reimbursement generally results in a quicker decision because the resources of a consulting firm are dedicated to the investigation of a particular application. A decision may be obtained within a matter of months rather than a matter of years. The time will vary according to the complexity of the proposal and the number of competing applications that may need to be addressed.

WHY IT MATTERS

Water availability varies from one watershed to another, based on existing water rights, the physical and hydrologic characteristics of each watershed, and legal restrictions. There is currently a waiting list of approximately 7,000 pending water right and water right change applications statewide. A number of factors have come together to create this situation, in particular:

- limited staff and resources
- more complex decision-making process
- limited water availability.

For applicants who want to speed up the decision-making process on their water right application, **cost reimbursement** is one important option.

For more information, contact your nearest Ecology office

Central Regional Office
509-575-2490

Eastern Regional Office
509-329-3400

Northwest Regional Office
425-649-7000

Southwest Regional Office
360-407-6300

Statewide water availability information

<http://www.ecy.wa.gov/programs/wr/rights/wrpendapp.html>

Special accommodations

If you need this document in a format for the visually impaired, call the Water Resources Program at 360-407-6872. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Q: What are the disadvantages of cost reimbursement?

A: For an applicant, the key disadvantage is cost. The cost may be beyond the ability of many applicants to pay. Applicants who choose to wait for Ecology to process their application pay a minimum fee of \$50 per application, plus the public notice costs. The actual costs of processing an application are significantly greater, but those additional costs are paid out of the agency's own budget, using tax dollars. No application fee is required if a party enters into a Cost Reimbursement Agreement.

An applicant who enters a Cost Reimbursement Agreement is expected to pay the full cost of processing the application, and in some cases, other senior applications – including the cost it takes to hire a consulting firm. (Applications for the same water body are usually processed in the order received. “Senior applications” are those with an earlier submittal date than the one in question.) In addition to the contracting costs, the applicant is expected to pay the costs of Ecology staff time spent reviewing the work of the consultant and managing the contract.

Q: How much does the cost reimbursement process cost?

A: The costs can range from a few thousand dollars to, in exceptional cases, hundreds of thousands of dollars. The cost will vary according to the number and complexity of applications, the fees charged by the consultant and the number of hours that Ecology must spend reviewing the work of the consultant.

It is important for applicants to understand that consultants are permitted to do only what it is provided for in their contracts as approved by Ecology. And applicants are expected to fully pay for those costs. To gather important data about the effects of a proposed withdrawal, a consultant may find it necessary to drill test wells and perform pump tests. This could add to the costs significantly.

In addition, as the investigation of a particular water right application proceeds, new issues may arise that were not identified during the initial scoping process. In such cases it may be necessary to develop amendments to the existing agreement to expand the scope, increase the budget, or extend deadlines.

Q: How does an applicant initiate the cost reimbursement process?

A: Ecology recommends that any applicant considering the cost reimbursement process first consult with Ecology regional staff. Regional staff will be able to give an applicant an idea of how many other applications are in the same watershed, share their knowledge of watershed issues and provide an initial impression of the likelihood that water will be available. Regional contact numbers are on the first page sidebar.

Ecology staff also will be able to discuss what type of costs the applicant must pay, such as:

- Consultant services
- Ecology time spent reviewing the consultant's work and managing the contract
- Certain legal costs.

Q: How does the cost reimbursement process work?

A: The cost reimbursement process is broken into two distinct phases. Phase One includes a thorough analysis of the water source boundaries and other existing applications. This can be done by an applicant and his or her consultant, or by Ecology’s consultant.

Phase Two consists of preparing technical reports supporting the decision on the water right request, and must be done by Ecology’s consultant.

Phase One

In Phase One, the application is evaluated to identify the boundaries of the source of water. This is the area that could be affected by a proposed water withdrawal. In the case of groundwater applications, this requires a preliminary delineation of the affected aquifer.

A Phase One analysis includes looking at whether there are other prior applications requesting water from the same source. It will also identify likely issues that require further evaluation, and may provide a scope and cost estimate for completing Phase Two of the evaluation.

Applicant can choose consultant, to work with directly or through Ecology

If the applicant wishes to have Ecology manage the Phase One work, he or she may formally request Ecology to enter into a Cost Reimbursement Agreement. (For applicants using their own consultant to prepare a Phase One report, skip down to the section on Phase Two.) Ecology will choose a consulting firm from a preapproved list, ensure there is no conflict of interest, and ask the firm to submit a proposal and cost estimate for performing a Phase One analysis. (Note: the applicant has the option of choosing the consultant from Ecology’s preapproved list.)

Applicant has opportunities to stop the process at several junctures

A Phase One analysis typically costs between \$5,000 and \$10,000. If the applicant accepts the proposal, a written contract is developed and signed by the applicant and Ecology. Ecology’s consultant is then assigned the task of performing a Phase One analysis. If the costs are too high, the applicant may choose not to pursue the process any further.

Upon completion of the Phase One analysis, an applicant once again has the option to stop the process.

Phase Two

In Phase Two, Ecology’s consultant prepares a Report of Examination (Ecology’s decision) for the application(s). The Report of Examination consists of technical reports which investigate the issues of water availability and the potential for impairment to other water right holders.

THE COST REIMBURSEMENT PROCESS

Applicant may enter into a Cost Reimbursement Agreement with Ecology either before Phase One or Phase Two.



Phase One

Identify competing applicants.

Define the boundaries of the water source.

Make Initial assessment of water right issues.

Develop Phase Two scope and budget.



Phase Two

Consultant analyzes issues of water availability and the potential for impairment to other users.

Consultant prepares Reports of Examination.



Ecology approves or denies application.

If the applicant had Ecology contract with a pre-approved consultant to conduct Phase One, a report will be provided to the applicant with scope and a cost estimate for Phase Two. If the applicant used his or her own consultant in Phase One, the report will be forwarded to Ecology's consultant (chosen by the applicant from Ecology's pre-approved list). With the report will be a request to provide a scope and cost estimate for Phase Two.

Q: What kinds of payment options are available?

A: In general there are two payment options for a cost reimbursement agreement. The first is a full pre-payment of the costs identified in the agreement. The second is to provide Ecology with a \$5,000 security deposit and the applicant will be billed as Ecology receives invoices from our consultant.

Under the first option, any funds that are not used at the completion of the project would be refunded. Under the second option, the security deposit is refunded at the completion of the project.

Q: Does entering into a Cost Reimbursement Agreement allow me to jump to the head of the line?

A: In some cases, yes. Under usual circumstances, Ecology must process applications for the same source of water in the order they are received. (The oldest, or most senior, are processed first.) However there is more flexibility under the new laws (RCW 90.03.265). If your water request won't reduce the water available for senior applicants, you can have your application handled under a Cost Reimbursement Agreement without processing the senior applications.

Q: Does entering a Cost Reimbursement Agreement automatically mean my application will be approved?

A: No. A Cost Reimbursement Agreement only provides that a decision may be made. That decision could be approval or denial of the application(s). If it looks like the decision will be a denial, you will be so notified and will have the option of ending the agreement to save on costs.

Q: Can I appeal a decision on my water-right application? Who pays for the appeal?

A: You may appeal a decision if you disagree. In such cases, you are responsible for paying for the legal costs of your own appeal. Ecology's decisions on water rights are defended by the state Attorney General Office. If a third party appeals a decision, you may be responsible for reimbursing the state for the cost of defending the decision before the Pollution Control Hearings Board (PCHB). Ecology may negotiate further reimbursement if the decision is appealed beyond the PCHB.